REINVENTING PAPERWORK?: THE CLINTON-GORE ADMINISTRATION'S RECORD ON PAPERWORK REDUCTION

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM

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REINVENTING PAPERWORK?: THE CLINTON-GORE ADMINISTRATION'S RECORD ON PAPERWORK REDUCTION

WEDNESDAY, APRIL 12, 2000

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. David M. McIntosh (chairman of the subcommittee) presiding.

Present: Representatives McIntosh, Ryan, Terry, Chenoweth-Hage, and Kucinich.

Staff present: Marlo Lewis, Jr., staff director; Barbara F. Kahlow, professional staff member; William C. Waller, counsel; Gabriel Neil Ruben, clerk; Michelle Ash and Elizabeth Mundinger, minority counsels; and Ellen Rayner, minority chief clerk.

Mr. MCINTOSH. Welcome. The Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs is in order, a quorum being present. Today the subcommittee is conducting a followup to its April 15th, 1999 hearing on the Clinton-Gore administration's record on paperwork reduction. Once again the record shows a minimal number of actual paperwork reduction accomplishments and a minimal number of specific paperwork reduction initiatives in the administration's last 2 years.

Last year's hearing revealed basically no involvement by the Vice President in paperwork reduction even though he heads the administration's Reinventing Government effort. That hearing also reveals the Office of Management and Budget's mismanagement of the paperwork burden imposed on Americans.

Today we will examine if the Vice President and OMB's track records have indeed improved. The Paperwork Reduction Act requires OMB to be the Federal Government's watchdog for paperwork, making OMB responsible for guarding the public's interest in minimizing costly, time consuming and intrusive paperwork burden. Yet OMB failed to push the Internal Revenue Service and other agencies to cut existing paperwork burdens on taxpayers. In fact, last year the IRS, which accounts for nearly 80 percent of the governmentwide paperwork burden on Americans, identified no specific expected paperwork reductions for the year 2000. None.

Worse, the General Accounting Office confirmed at last year's hearing that OMB misled the American people, providing a falsely

inflated picture of the administration's paperwork reduction accomplishments. The way they do this is they count as reductions in paperwork when the computer drops off its list those forms which have expired for their approval by OMB even though the agency continues to use the form. This would be like a company saying to the IRS I'm only going to report to you those sales that we keep in our computer for 6 months and nothing before that. If they did, I think you would send them to jail, Commissioner. And, OMB unfortunately, is taking that same cavalier attitude toward reporting their responsibilities for reducing paperwork.

They did identify 872 violations of law last year and 710 violations of law this year where agencies levied unauthorized paperwork burdens on the American people. GAO stated that there is a troubling disregard, in their words, by the agencies for the requirements of the Paperwork Reduction Act. GAO further stated, "As disconcerting as those violations are, even more troubling is that OMB reflects the hours associated with unauthorized information collections ongoing at the end of the fiscal year as burden reductions."

We all know the direct costs of the Tax Code, the $2 trillion Americans pay Uncle Sam. But there is also a hidden cost that adds an extra 8 percent, according to the Government's estimate, on how long it takes to fill out IRS forms, or $160 billion, to that burden. Each year Americans are estimated to spend a total of 6.1 billion hours complying with the 691 tax forms. This doesn't count the outside accountants they hire, the cost of computers, and other mechanisms by which taxpayers keep track of their obligations and the huge amounts that taxpayers pay to those entities and accountants to help them complete the IRS forms. This cost is an enormous burden for Americans.

Please note the large stacks of paperwork requirements on display in front of the hearing room. The first stack includes IRS paperwork forms imposed on small businesses. The second stack includes other IRS paperwork forms imposed on Americans. It also includes the regulations and the laws relating to those stacks.

Soon after last year's hearing I met with IRS Commissioner Rossotti, who suggests dramatically decreased IRS paperwork burden was one of his primary objectives. One idea I suggested is to have the IRS send taxpayers a simple booklet similar to what accountants send to their clients to complete so the IRS can complete the complicated forms for each taxpayer. Another idea I suggested is to have the IRS send taxpayers partially completed tax forms, including all information previously forwarded to the IRS by third parties, such as interest earned, dividends received, mortgage interest paid, real estate paid, charitable contributions over $250, etc., so that taxpayers would only have to complete the remaining fraction of information on the forms.

I also recommended that the IRS sample the forms filed by actual small businesses to identify opportunities to reduce duplication and to simplify reporting. I look forward to hearing how the IRS has analyzed each of these possibilities and if they're being pursued or what other ideas they're pursuing to reduce the paperwork burden.

Now, let me turn to the entire government's paperwork, which OMB has dramatically mismanaged. The Paperwork Reduction Act principally intended to, "minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, state and local and tribal governments and persons resulting from the collection of information by or for the Federal Government." The act sets governmentwide paperwork reductions goals of 10 or 5 percent per year from 1996 to 2000.

Now, the first chart on display reveals that the Clinton-Gore administration has increased, not decreased, that's increased, paperwork in each of these years. What should be going down is indeed going up, and in fact further, higher this year.

After last year's hearing we requested that, starting in July, OMB keep basic information about its role in governmentwide paperwork reduction. The law requires OMB to keep the Congress fully informed. Incredibly OMB has repeatedly refused to comply with this oversight request, even claiming that doing so "would impair our ability to serve the public."

Because OMB refused to keep track of its own paperwork reduction actions, in December 1999, we surveyed 28 departments and agencies to identify any substantive changes in agency paperwork submissions made by OMB pursuant to the law and any paperwork reduction candidates added by OMB in the time period of July 1, 1999 to December 31, 1999. As chart 2 displays, over this 6-month period, OMB independently identified no paperwork reduction candidate from the over 7,000 existing paperwork requirements in OMB's inventory. None. And only reduced by about 2000 hours from the agency generated paperwork. This trivial amount hardly makes a dent in the 7.3 billion hours of paperwork that OMB keeps track of.

I believe the American people deserve better results from their Vice President, who chairs the effort, and better results from OMB, the agency.

The subcommittee's investigations reveal a disturbing pattern of contempt for congressional oversight that goes beyond OMB's disregard for its own paperwork reduction responsibilities. From March 1998 to March 2000, the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs sent 14 oversight letters to OMB on paperwork reduction, 6 oversight letters on governmentwide guidance to the agencies, 14 oversight letters and a subpoena to OMB to understand the President's request for a $6.3 billion increase in funding for their climate change proposals.

Here's what we found. First, they refused to provide basic accountability information so the subcommittee can determine their role in paperwork reduction. Second, OMB has refused to issue complete Congressional Review Act [CRA] guidance even after Congress in the 1998 appropriations act provided OMB an additional $200,000 to do so at my request, the Appropriations Committee provided that, and even after Congress in the 1999 appropriations act directed OMB to issue additional CRA guidance to ensure that agencies would fully comply with the law. I am not sure what we can do there but maybe we ought to ask some of the folks at OMB

if they want to reimburse the taxpayers that $200,000 out of their own paychecks.

Third, OMB does not make a complete search in response to our June 26, 1998 subpoena for information on proposed funding of global climate change programs and activities.

As a consequence of this pattern, I have asked an expert in the Congressional Research Service to present options available to Congress when faced with agency non-responsiveness to congressional oversight, including subpoena requests for documents and letter requests for specific information.

So today in our hearing we will pursue both the IRS plans and the general scope of government efforts to reduce paperwork.

I want to welcome back the IRS Commissioner, who testified at last year's hearing. The Clinton administration will also be represented by John Spotila, who is OMB's OIRA Director. I asked Mr. Spotila to discuss substantive changes in paperwork made by the OMB staff.

I also want to welcome Nancy Kingsbury, who is the Acting Assistant Comptroller General for the General Government Division at GAO, and Morton Rosenberg, specialist in American Law at CRS.

Finally, I also want to welcome two folks from my home State in Indiana, Cindy Noe, who is owner of the IHM Facility Services in Fishers, IN, and Nick Runnebohm, who is owner of Runnebohm Construction Co. in Shelbyville, IN. They will discuss paperwork issues of concern to real Americans outside of Washington who are operating small businesses in Indiana.

Welcome to everyone here.

[The prepared statement of Hon. David M. McIntosh follows:]

Statement of Chairman David McIntosh
Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs
on
"Reinventing Paperwork?:
The Clinton-Gore Administration's Record on Paperwork Reduction"
April 12, 2000

Today, the Subcommittee is conducting a followup to its April 15, 1999 hearing on the Clinton-Gore Administration's abysmal record on paperwork reduction. Once again, the record shows a minimal number of actual paperwork reduction accomplishments and a minimal number of specific paperwork reduction initiatives in the Administration's last two years. Last year's hearing revealed basically no involvement by the Vice President in paperwork reduction, even though he heads the Administration's Reinventing Government effort. That hearing also revealed the Office of Management and Budget's (OMB) mis-management of the paperwork burden imposed on Americans. Today, we will examine if the Vice President's and OMB's track records have improved.

The Paperwork Reduction Act (PRA) requires OMB to be the Federal government's watchdog for paperwork, making OMB responsible for guarding the public's interest in minimizing costly, time-consuming, and intrusive paperwork burden. Yet OMB failed to push the Internal Revenue Service (IRS) - and other Federal agencies - to cut existing paperwork burdens on taxpayers. In fact, last year, IRS, which accounts for nearly 80 percent of the goverment-wide paperwork burden on Americans, identified no specific expected paperwork reductions in year 2000. None!

Worse, the General Accounting Office (GAO) confirmed in last year's hearing that OMB lied to the American people, providing a falsely-inflated picture of the Clinton-Gore Administration's paperwork reduction accomplishments. OMB identified 872 violations of law last year and 710 violations of law this year where agencies levied unauthorized paperwork burdens on the American people. GAO stated that there is a "troubling disregard" by the agencies for the requirements of the Paperwork Reduction Act. GAO stated, "[a]s disconcerting as these violations are, even more troubling is that [OMB] reflects the hours associated with unauthorized information collections ongoing at the end of the fiscal year as burden reductions."

We all know the direct costs of the tax code -- the $2.0 trillion Americans pay Uncle Sam. But there is a "hidden" cost that adds an extra 8 percent or $161 billion to that burden. Each year Americans spend an estimated 6.1 billion hours complying with the 691 tax forms plus a huge amount taxpayers pay to accountants to help them complete IRS' complicated tax forms. This is unconscionable. Please note the large stacks of paperwork requirements on display. The first stack includes IRS paperwork forms imposed on small businesses; the second stack includes all other IRS paperwork forms imposed on Americans.

Soon after last year's hearing, I met with IRS Commissioner Rossotti to suggest ways to dramatically decrease IRS' paperwork burden. One idea I suggested is to have the IRS send taxpayers a simple booklet, similar to what accountants send to their clients to complete, so that the IRS can complete the complicated tax forms for each taxpayer. Another idea I suggested is to have the IRS send taxpayers partially completed tax forms, including all information previously forwarded to the IRS by third parties, including interest earned, dividends received, mortgage interest paid, real estate taxes paid, charitable contributions over $250, etc., so that taxpayers would only have to complete the remaining fraction of information on the tax forms. I also recommended that IRS sample the forms filed by actual small businesses to identify opportunities to reduce duplication and to simplify reporting. I look forward to hearing how IRS analyzed each of these possibilities and if they are being pursued.

Now, let me turn to the entire government's paperwork, which OMB has mis-managed. The Paperwork Reduction Act was principally intended to "minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and persons resulting from the collection of information by or for the Federal Government" (44 U.S.C. §3501). The Act set government-wide paperwork reduction goals of 10 or 5 percent per year from 1996 to 2000. As Chart #1 on display reveals, the Clinton-Gore Administration has increased, not decreased, paperwork in each of these years. What should be going down is going up and up.

After last year's hearing, we requested that, starting July 1, 1999, OMB keep basic information about its role in government-wide paperwork reduction. The law requires OMB to keep the Congress "fully" informed (44 U.S.C. §3514). Incredibly, OMB has repeatedly refused to comply with this oversight request and even claimed that doing so "would impair our ability to serve the public." Because OMB refused to keep track of its own paperwork reduction actions, in December 1999, we surveyed 28 departments and agencies to identify any substantive changes in agency paperwork submissions made by OMB and any paperwork reduction candidates added by OMB from July 1, 1999 to December 31, 1999. As Chart #2 on display reveals, over this 6-month period, OMB independently identified no paperwork reduction candidates from the over 7,000 existing paperwork requirements in OMB's inventory and only reduced 1,915 hours from agency-generated paperwork. This trivial amount hardly makes a dent in the 7.3 billion hours of paperwork in OMB's inventory.

The 1,915 hours of reductions made by OMB is 3/100,000ths of 1% of the 7.3 billion total government-wide paperwork burden hours on the public and only 5/10,000ths of 1% of the 1999 statutory paperwork reduction goal of 348 million hours. OMB: (1) cut 938 hours from Agriculture's "emergency" survey to identify 100-year old family farms for the First Lady's Millennium Celebration and to award each such farm a commemorative certificate; (2) disapproved 42 hours for HHS' proposal to assess ethnicity/race and services to bi/multilingual populations in community health centers because it failed to serve an agency purpose and lacked practical utility; and, (3) cut 935 hours from the Corporation for National Service's $1,450,000 longitudinal study "to measure the outcomes and impacts of national service on individuals who serve in AmeriCorps programs." These proposals make me wonder what paperwork OMB

approved without reducing burden on the public. I believe that the American people deserve better results from their Vice President and OMB.
The Subcommittee's investigations reveal a disturbing pattern of contempt for Congressional oversight that goes beyond OMB's disregard of its paperwork reduction responsibilities. From March 1998 to March 2000, the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs sent 14 oversight letters to OMB on paperwork reduction, six oversight letters to OMB on its government-wide guidance to the agencies to comply with the Congressional Review Act (CRA), and 14 oversight letters and a subpoena to OMB to understand the President's request for a $6.3 billion increase in funding for climate change programs and activities. Here's what we found:

First, OMB has refused to provide basic accountability information so that the Subcommittee can determine OMB's role in paperwork reduction. Absent such information, it is difficult, if not impossible, to justify full funding for OIRA's 50-plus authorized staff.

Second, OMB has refused to issue complete CRA guidance, even after Congress in the 1998 Appropriations Act provided OMB an additional $200,000 to do so, and even after Congress in the 1999 Appropriations Act directed OMB to issue additional CRA guidance to ensure that agencies would fully comply with the new law.

Third, OMB did not make a complete search in response to our June 26, 1998 subpoena for information on proposed funding for global climate change programs and activities. On July 2, 1999 -- over a year later and after Senator Mike Enzi held up an OMB official's nomination to be Deputy Secretary for Energy -- OMB finally admitted that it conducted an incomplete search in response to our subpoena. OMB did not include documents sent to OMB, only documents originated by OMB or with handwritten comments made by OMB. Incredibly, in its response to our subpoena, OMB did not contact all OMB staff or issue written directions to staff, which is standard OMB practice for responding to subpoenas.

As a consequence of this pattern, I have asked an expert in the Congressional Research Service (CRS) to present options available to Congress when faced with agency nonresponsiveness to Congressional oversight, including subpoena requests for documents and letter requests for specific information.

I want to welcome back IRS Commissioner Charles Rossotti, who testified at last year's hearing. The Clinton Administration will also be represented by John Spotila, who is OMB's OIRA Administrator. I asked Mr. Spotila to discuss substantive changes in paperwork made by OMB staff. I also want to welcome Nancy Kingsbury, Acting Assistant Comptroller General for the General Government Division, GAO and Morton Rosenberg, Specialist in American Law, CRS. Lastly, I want to welcome Cindy Noe, owner of IHM Facility Services in Fishers, Indiana and Nick Runnebohm, owner of Runnebohm Construction Company in Shelbyville, Indiana. They will address paperwork issues of concern to American small business taxpayers.

Chart 1 -- Paperwork Reduction "Accomplishments" By The Clinton Administration

Fiscal Year	Statutory Paperwork Reduction Goal Set by Congress	Percent of Actual or Expected Increases
1996	**-10%**	**+2.3% ***
1997	**-10%**	**+1.0% ***
1998	**- 5%**	**+0.4%**
1999	**- 5%**	**+2.7%**
2000	**- 5%**	**+2.5%**

* **Not adjusted to reflect violation of the Paperwork Reduction Act incorrectly counted as program reductions.**

Prepared for Congressman David M. McIntosh

Chart 2 -- Agency Reports of OMB's Initiatives in Paperwork Reduction: 7/1/99 - 12/31/99

Agency	Number of Paperwork Hours Reduced by OMB Reviews	Number of Paperwork Candidates Added by OMB
Agriculture	-938	NONE
Commerce	NONE	NONE
Defense	NONE	NONE
Education	NONE	NONE
Energy	NONE	NONE
HHS	-42	NONE
HUD	NONE	NONE
Interior	NONE	NONE
Justice	NONE	NONE
Labor	NONE	NONE
State	NONE	NONE
Transportation	NONE	NONE
Treasury (including IRS)	NONE	NONE
Veterans Affairs	NONE	NONE
CNS	-935	NONE
EPA	NONE	NONE
EEOC	NONE	NONE
FEMA	NONE	NONE
NASA	NONE	NONE
NSF	NONE	NONE
NRC	NONE	NONE
OPM	NONE	NONE
SBA	NONE	NONE
SSA	NONE	NONE
FCC	NONE	NONE
FDIC	NONE	NONE
FTC	NONE	NONE
SEC	NONE	NONE
TOTAL OMB INITIATIVES	-1,915 hours	NONE
TOTAL GOVERNMENT PAPERWORK BURDEN	7.3 billion hours in OMB inventory	7,563 paperwork dockets in OMB inventory

Prepared for Congressman David M. McIntosh

Chart 3 -- Most Burdensome Paperwork: 3/31/2000

Agency	Paperwork Category	No. of Paperwork Dockets	No. of Hours	Percent of Total Government Paperwork Burden
IRS	**over 10,000,000 hours each**	**39**	**5,694,214,197**	**78**
All agencies (including IRS)	**over 10,000,000 hours each**	**60**	**6,215,209,300**	**85**
TOTAL	**all paperwork**	**7,563**	**7,340,174,209**	**100**

Prepared for Congressman David M. McIntosh

Mr. MCINTOSH. Let me now turn to the gentleman who is a very active and helpful partner in this committee, our minority leader, Mr. Dennis Kucinich.

Mr. KUCINICH. Good morning. Mr. Chairman, it's good to be with you this morning. I want to welcome our guests and our visitors who will be testifying. For those who are here from Indiana I want to give you a special greeting and let you know you would be very proud of Mr. McIntosh. He serves this Congress well. I'm glad to have the chance to work with him here today. I want to thank him for holding this hearing on paperwork reduction.

I am especially pleased that Commissioner Rossotti could join us here today. As we know, about 80 percent of the paperwork burden which Americans have to deal with is related to the business of the Internal Revenue Service. And with tax day just around the corner it's a good time to reflect on the job that the IRS is doing and whether or not it's limiting the paperwork burden that it places on the American taxpayer.

Mr. Chairman, I share your concern that we're not meeting the Paperwork Reduction Act goal of reducing the paperwork burden by 30 percent over the last 4 years and I'm concerned that the paperwork burden actually increased by about 3 percent over that period of time.

From what I understand, much of that increase is due to our actions here in Congress. For instance, when Congress passed the Taxpayer Relief Act in 1997, which cut capital gains, estate and gift taxes. The IRS, the information I have, estimated that these changes increased the paperwork burden—they actually increased paperwork burden by about 64 million hours.

Much of the remaining increase is apparently due to the increased economic activity in our booming national economy. Furthermore, the methodology for estimating the paperwork burden may not be giving enough credit for the time saved by the increase in the use of electronic and telephone filing. I look forward to hearing from the witnesses who can provide further insight into the underlying causes of the increased burden and as to your ideas as to what we might be able to do.

Mr. Chairman, I'm not going to belittle the importance of the information we collect. Without taxes our government would not be able to provide the protections, benefits, and services Americans depend on and often take for granted. It's imperative that the IRS successfully fulfills its mission to collect the right amount of tax. Similarly, other agencies need the data they collect in order to fulfill their important missions.

It may be that in this Information Age that reduction of paperwork will prove to be most challenging, and it would appear that improvements in data base and electronic information gathering would enable us to reduce paperwork. On the other hand, in a free society with the proliferation of more information, there may be more paperwork created as we become more efficient at implementing laws. And it is a paradox. But then again we often have a way of legislating paradoxes.

You know, I also think it's important to keep in mind that there's a sense in which paperwork can reduce the overall burden that government would otherwise need to place it on the American pub-

lic and in small businesses. For example, and I think we've talked about this before, reporting requirements proposed by the Environmental Protection Agency under the Regulatory Right-to-Know Act provide it with information about onsite toxic materials that pose a danger to the surrounding community. If the EPA did not collect this type of data, it would need to conduct onsite inspections which are significantly more intrusive than reporting requirements. And much of the increase in paperwork proposed by the IRS reflects the fact that the Government is imposing less of a financial burden on American taxpayers by offering more tax breaks.

Nevertheless, I agree with Chairman McIntosh, we need to make sure that the information the Government is collecting is information it needs, and it's being collected in the least burdensome and most efficient manner. Paperwork can be very costly on our small businesses and individuals. And I know it's that concern which motivates Chairman McIntosh and I think that's a concern that always needs to be stated. That's why we're here, to try to make things a little bit better for the American people. So I appreciate the job that you're doing in that regard.

We have to make sure that the agencies are doing their best to eliminate unnecessary burdensome requests, to streamline forms and to consolidate requests. And I'm sure that this hearing will shed some light on the IRS and other agencies' fulfillment of these important responsibilities.

Again, Mr. Chairman, thank you for holding this hearing. I look forward to the testimony.

[The prepared statement of Hon. Dennis J. Kucinich follows:]

Statement of Rep. Dennis Kucinich
Ranking Minority Member
April 12, 2000 Hearing on Paperwork Reduction

Mr. Chairman, thank you for holding this hearing on paperwork reduction.

I am especially pleased that Commissioner Rossotti could join us here today. About eighty percent of the paperwork burden imposed on Americans is imposed by the Internal Revenue Service. And with "tax day" just around the corner, it is a good time to reflect on whether the IRS is doing a good job at limiting the paperwork burden it places on the American taxpayer.

Mr. Chairman, I share your concern that we are not only failing to meet the Paperwork Reduction Act goal of reducing the paperwork burden by 30% over the last 4 years, but the paperwork burden has actually increased by about 3% over that time period.

It is my understanding that much of the increase is due to our actions here in Congress. For instance, Congress

passed the Taxpayer Relief Act of 1997 -- an initiative originally proposed as part of the Republican Contract with America -- which cuts capital gains, estate, and gift taxes. The IRS estimated that these changes increased the paperwork burden by over 64 million hours.

Much of the remaining increase is apparently due to the increased economic activity in our booming national economy. Furthermore, the methodology for estimating the paperwork burden may not be giving enough credit for the time saved by the increase in the use of electronic and telephone filing. I look forward to hearing from the witnesses who can provide further insight into underlying causes of the increased burden.

However, Mr. Chairman, I do not want to belittle the importance of the information we collect. Without taxes, our government could not provide the protections, benefits, and services Americans depend on and often take for granted. It is imperative that the IRS successfully fulfill its mission to collect the right amount of tax. Similarly, the other agencies need the data they collect in order to fulfill their important

missions.

It is also important to keep in mind that paperwork can actually reduce the overall burden the government would otherwise need to place on the American public and small businesses. For instance, reporting requirements posed by the Environmental Protection Agency under the Regulatory Right to Know Act provide it with information about on-site toxic materials that pose a danger to the surrounding community. If the EPA did not collect this type of data, it would need to conduct on-site inspections which are significantly more intrusive than reporting requirements. And much of the increase in paperwork posed by the IRS reflects the fact that the government is posing less of a financial burden on American taxpayers by offering more tax breaks.

Nevertheless, we need to make sure that the government is collecting the information it needs in the least burdensome and most efficient manner. Paperwork can be very costly on our small businesses and individuals. We should make sure that agencies are doing their best to

eliminate unnecessarily burdensome requests, to streamline forms, and to consolidate requests. I hope this hearing will shed some light on whether the IRS and the other agencies are fulfilling these important responsibilities.

Thank you, again, for holding this hearing and I look forward to the testimony.

Mr. MCINTOSH. Thank you, Mr. Kucinich. As always, your perspective has contributed another good idea. Perhaps the subcommittee ought to ask the agencies to identify those areas where Congress is creating paperwork burdens and we can pass those on to other committees and try to work on our colleagues as well.

Mr. KUCINICH. I think that's good. And, again, I salute you for caring about this because Americans need individuals who are—you know, who want to make this process work better, and I thank you for doing that.

Thank you.

Mr. MCINTOSH. We'll work and develop a letter to all the agencies. Maybe we can send that. Let's plan on sending it out so we can then solicit some ideas of where the law can be changed to help reduce the burden as well.

Let me now ask Mr. Terry, who is a great member of this committee, if you have any opening remarks.

Mr. TERRY. I don't have any prepared remarks but I do want to place a couple of observations into the record. One is I agree with my friend and colleague from Ohio that it is frustrating when we try and do something right, like deal with the estate tax, death tax, and one of my frustrations in Congress is sometimes we have to take little steps toward the right direction. Nothing would please me more than to help the Code by just eliminating the estate tax section. That would be easier and we could reduce that level of paperwork instead of trying to ease the burden and thereby increasing paperwork.

But it is frustrating that there hasn't been sufficient steps taken I think by a variety of agencies to reduce their workload, the paperwork load on particularly small businesses. When I'm around in my district talking to small business owners, particularly those that deal with Federal agencies, that's one of their single most frustrations. Their No. 1 is labor availability and No. 2 is that so much of their small labor force that they have on staff is dedicated to simply complying.

And here's the rhetorical observation that I'm just going to put into the record, Mr. Chairman. In your statement you pointed out this administration's increase in paperwork. And that shouldn't come as any surprise considering this administration has a philosophy of bypassing Congress and legislating through regulation, regulation equals paperwork on businesses. These folks that are here today to justify their noncompliance are part of the executive branch. So to me it's a simple answer to that rhetorical question of why there has been little to no effort in the last year to reduce the paperwork burden on American citizens.

Mr. MCINTOSH. Thank you. Let us now hear from our witnesses today. It is the policy of the full committee to ask all witnesses before each of the subcommittees to be sworn in. So let me ask each of you to please rise now.

[Witnesses sworn.]

Mr. MCINTOSH. Let the record show that each of the witnesses answered in the affirmative. Let me now welcome Mr. Rossotti, Commissioner of the IRS. I know it's a tense time as we're approaching that April 17th deadline but I appreciate your coming and spending some time with us on this critical question. Share

with us a summary of your testimony. The entire remarks will be put into the record. And welcome. Thank you.

STATEMENT OF CHARLES O. ROSSOTTI, COMMISSIONER, INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

Mr. ROSSOTTI. Thank you very much, Mr. Chairman and Mr. Kucinich and Mr. Terry. I really do appreciate the opportunity to be here this morning to testify concerning some of our efforts related to paperwork and more generally, administrative burden, particularly on small business taxpayers. Since I last appeared before your committee we have made some progress to simplify forms and optimally, to reduce the number of taxpayers who would even have to file certain forms.

Our efforts are detailed in my written testimony. I would just like to mention in my oral testimony two initiatives. First one, I'm very pleased to announce here this morning that, beginning in the 2001 filing season, paid return preparers will be able to use the third party authorization check box on all Form 1040 series returns with the exception of those filed by phone. This means we expect that taxpayers will initially save about 2 million hours by using this check box feature instead of having to file separate forms for authorizing third party disclosure authorizations or powers of attorney declarations.

Further—that's just the initial saving. For many taxpayers and for people who prepare their returns the real savings in both time and frustration will be in eliminating the need for the taxpayers to receive and respond to notices and correspondence which we know they would prefer to have sent to their designees. So we estimate that this will save about another 1.8 million hours by allowing the IRS to work directly with these designees in resolving such items as error notices and original correspondence related to taxpayer accounts. This change is not only, we think, an important step in reducing burden and improving service; it's also an excellent example of our new approach, which is to solicit input directly from taxpayers and their representatives on how we can improve things.

This particular proposal I want to stress was actually originated and championed by citizens on our Citizens Advisory Panel in south Florida, which is one of our four advisory panels.

The second initiative I want to mention this morning involved the Schedule D. As you know, Mr. Chairman, due to the booming market many more people have capital gains than they used to. Now for tax year 1999, which is the year that people are currently filing returns for, those taxpayers whose only capital gains are from mutual fund distributions may not need to file a Schedule D at all. Instead, what we have done is we allowed them to report these gains directly on Form 1040, line 13. So rather than filing a 54-line Schedule D, they will be able to use a worksheet which they don't even have to file with us, which will allow them to then enter these data directly on the Schedule 1040. This will represent we estimate about a 24 million hour reduction, this one change, for 6 million taxpayers that are filing right now in this filing season.

Now, Mr. Chairman, having mentioned these two which I think are very positive and some others in my written testimony, I still want to acknowledge, as you noted in your statement, there is much more room for improvement. We take very seriously the charge of this committee and our taxpayers to reduce paperwork and appreciate your leadership in calling attention to this issue.

I do want to note, even as we discussed last year, paperwork per se does not actually capture the full range of taxpayer burdens in dealing with the IRS nor does it represent all the opportunities we have to reduce the burden. I think in order to truly reduce all of the burdens the taxpayers have to comply with the Tax Code we need to be creative and look not only to redesigning and simplifying forms but other opportunities. If you look at the broader economy I think you would find that most successful businesses are improving customer service and efficiency, not so much only by redesigning their forms but by taking advantage of new technologies and new business practices. And that's also a major thrust of the IRS.

Similarly, as many have noted and as we discussed last year, I believe after this hearing, Mr. Chairman, we also need to revisit our methodology about how we actually calculate burden. Frankly, in the world of new software we need to find a more comprehensive and better way. We are working actively on that.

Now, quite frequently the Tax Code, as several members have noted, also limits our options and opportunities as to where we can redesign or eliminate tax forms. And in some cases, in order to actually help taxpayers comply with the Tax Code and avoid filing errors, we actually increased the number of lines on a form or publication or in a worksheet, as we recently did with the EITC. Although it's counted as an increase in burden the extra lines may actually be easier for the taxpayer.

So those are some issues that we continue to deal with in trying to look broadly at reducing the overall burden while we still try to update our methodology.

Let me just stress, in conclusion, that we are attempting within the constraints of the law and the regulations to reduce the paperwork burden, but we're also looking at this broader spectrum of taxpayer burden of which paperwork is a part. For the long and short term we will work with the Congress, the taxpayers and our small and large businesses and their representatives to determine how we can best help them meet their obligations, pay what they need to pay, with the least burden and the least chance of error.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Rossotti follows:]

PREPARED TESTIMONY OF
COMMISSIONER OF INTERNAL REVENUE
CHARLES O. ROSSOTTI
BEFORE THE
HOUSE COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON
NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES AND REGULATORY AFFAIRS
HEARING ON
PAPERWORK REDUCTION
APRIL 12, 2000

INTRODUCTION

Mr. Chairman and distinguished Members of the Subcommittee, I am pleased to testify on the Internal Revenue Service's efforts to reduce paperwork and administrative burden on taxpayers, particularly on our small business taxpayers.

Since I last appeared before the Subcommittee, the IRS has made progress to eliminate forms, lines on forms, and optimally, reduce the number of taxpayers who were required to fill out specific forms. However, there is still much room for improvement.

The IRS takes very seriously the Subcommittee's charge and taxpayers' desire to reduce paperwork burden, and we appreciate your leadership on this issue. However, as we discussed after last year's hearing, paperwork does not fully capture the full range of taxpayer burden, nor the opportunities to reduce it.

In order to make truly meaningful reductions in taxpayer burden, we must be far more creative than redesigning and simplifying forms. If one looks at the broader economy, most successful businesses are improving customer service and efficiencies not by redesigning forms but by taking advantage of new technologies and business practices.

To better serve taxpayers and reduce their burden, the IRS must also take advantage of best business practices and modern technology. In addition, we must revisit our methodology for calculating burden to see if there is a better measure for calculating the impact of our efforts upon taxpayer burden.

Quite frequently, a very complex and changing Tax Code limits our options and opportunities as to where and how we can redesign, reduce or eliminate tax forms. Indeed, in order to help taxpayers better understand their tax filing requirements and avoid filing errors, we may increase the number of lines on a form or publication, or add a worksheet, as we recently did regarding the Earned Income Tax Credit.

Although under the present measurement system, these additions may be calculated as increasing paperwork, there are nevertheless, obvious benefits to taxpayers

and the Federal Government. One of the overriding themes in improving IRS business practices is to shift from addressing taxpayer problems well after returns are filed to addressing them as early as possible, and in fact, preventing problems upfront wherever possible. This approach follows the well-established quality principle that it is far less expensive to eliminate defects than to fix them afterwards. As a rule, if a taxpayer files a correct return, no further costs are incurred by either the taxpayer or the IRS. Our goal is to help taxpayers get it right the first time and thereby minimize their contacts with the IRS. Sometimes this may require an up-front investment of time and guidance.

Mr. Chairman, before I discuss our specific paperwork reduction initiatives, let me stress again that we must address not only paperwork reduction, but also the broad spectrum of taxpayer burden of which it is a part. For both the short and long term, the IRS will work with the Congress, taxpayers, small and large businesses and their representatives to determine how we can help taxpayers understand their tax obligations, and pay them as easily as possible with the least burden and the least chance of error.

PAPERWORK REDUCTION/SIMPLIFICATION INITIATIVES

Checkbox Burden Reduction Project

Mr. Chairman, I am pleased to announce today that beginning in the 2001 filing season, Paid Return Preparers can use the Third Party Authorization Checkbox on all Form 1040 Series returns with the exception of TeleFile. This checkbox indicates the taxpayer's desire to allow the IRS to discuss the tax return and attachments with the preparer while the return is being processed. This provides for a significant reduction in paperwork for millions of taxpayers. It also finally lays to rest a problem with which we have been grappling for years and which we are most pleased to resolve.

The proposal to include a checkbox on the family of 1040 returns is a direct response to requests from our external stakeholders, such as the National Society of Accountants, National Association of Tax Practitioners, National Association of Enrolled Agents and, and most recently, the South Florida Citizen Advocacy Panel (CAP).

The Boards of Directors of the external stakeholder organizations meet annually with the IRS Commissioner and propose methods to enhance cooperation between the Agency and the practitioner community and to make filing easier. The checkbox issue has been on our collective agendas for a number of years and numerous proposals were made to address this issue. However, they proved to be unworkable for a variety of reasons, ranging from representation questions to systems, equipment and capacity issues.

The checkbox designation I am announcing today should enable practitioners to expedite the resolution of questions concerning the processing of the taxpayer's return. It should also reduce the number of contacts necessary to resolve processing questions and eliminate the need for the submission of paperwork for a Power of Attorney, which is not required to resolve simple problems with a taxpayer's account. Our initiative also

addresses the practitioner groups' concern that this designee not be afforded post-assessment correspondence or representation.

Mr. Chairman, the IRS calculates that taxpayers will save an estimated 75,000 hours initially by not having to prepare a third party authorization disclosure form (Form 8821). Additional time will be saved because processing issues will be resolved immediately, thereby eliminating unnecessary post-filing contacts. However, we recognize that the net burden reduction, as we currently calculate it, will be less because there will be an increase in burden for reading and understanding Forms 1040 instructions for the new checkbox authority.

We further expect over a million taxpayers to use the checkbox feature in lieu of filing Form 2848 (Power of Attorney and Declaration of Representative). As a result, taxpayers will save an estimated 1.9 million hours initially by not having to prepare Form 2848. Once again, the net burden reduction will be less because we must assume there will be an increase in the burden for reading Forms1040 instructions and understanding the new checkbox authority.

The burden reduction that will result from the checkbox initiative is even greater when one considers the 9.1 million notices related to math errors and return preparation that were issued in 1999. Twenty-seven percent of these notices were related to returns prepared by paid preparers. The IRS estimates that taxpayers will save approximately 779 thousand hours by referring notices to their designees rather than responding to the IRS in writing or by telephone. Similarly, we estimate that taxpayers will save more than a million hours related to correspondence by allowing IRS to resolve issues by contacting their designees.

Relieving Burden of Reporting Capital Gain Distributions

For tax year 1999, taxpayers whose only capital gains are from mutual fund distributions may not need to file Schedule D (Form 1040), "Capital Gains and Losses." Instead, these gains are reported directly on Form 1040, line 13. IRS developed a new worksheet in the 1040 instructions to assist taxpayers in calculating the tax.

Rather than having to complete the 54-line schedule, these taxpayers can use a much easier 15-line worksheet. Indicative of the reception to the change is a comment we received on our website: "Thank you for your changes to the Capital Gains forms this year. Form D was very confusing. I find using the Capital Gains worksheet to be much easier." The change to the worksheet represents a dramatic burden reduction of 23.76 million hours for approximately six million taxpayers.

For the 2001 filing season, a line will be added to Form 1040A for reporting capital gain distributions from mutual funds, thus allowing the IRS to send the simpler Form 1040A package to the approximately 2.5 million taxpayers who in the past had to file Form 1040 to report those distributions.

Form 5500 Consolidation
(Employee/Pension Benefit Plans Reporting)

The Form 5500 series for 1999 used for reporting employee plan information has been substantially revised and improved. The prior Form 5500, Form 5500-C, and Form 5500-R have been replaced with *one* Form 5500. This new form will streamline reporting, filing and processing.

Form 2210 Streamlining (Underpayment of Estimated Tax by Individuals, Estates and Trusts)

We removed two lines from Part II of Form 2210. Part II is completed by self-employed taxpayers to calculate their self-employment tax when computing any estimated tax penalty. Each line had four entry spaces, one for each payment period. These taxpayers now have two fewer lines to complete and eight fewer calculations to make.

Earned Income Tax Credit (EITC) and Child Tax Credits (CTC) Projects

The IRS/Xerox Corporation partnership recently applied innovative document design and writing techniques to simplify the Earned Income Tax Credit instructions; Publication 596, "Earned Income Credit"; Child Tax Credit instructions and worksheets; and Form 8812, "Additional Child Tax Credit."

Mr. Chairman, once again I want to acknowledge the role of our Citizen Advocacy Panels in this redesign. In this instance, the Brooklyn CAP assisted in the redesign work on the EITC publication and the 1040 EITC schedule. They made an extremely valuable contribution to our efforts, and we look forward to working with the CAPs in the future to bring this type of hands-on input from taxpayers to our paperwork reduction redesign initiatives.

The EITC and CTC projects' goals are to increase taxpayers' awareness and understanding of the credits, to enable them to navigate more confidently through the qualification and computation phases, and thereby reduce errors in claiming or attempting to claim the credits.

The joint team effort used behavioral science principles to evaluate the effectiveness of the existing EITC and CTC materials, and to make improvements. While we do not yet have data from the current filing season, the reworked forms and instructions material tested highly successfully in focus group sessions, showing a dramatic decrease in the error rate. The redesigned EITC instructions refer taxpayers with very complex situations to Publication 596, "Earned Income Credit." Removing consideration of these special situations from the instructions simplified filing for 90 percent of taxpayers claiming the EITC.

Xerox Redesign Concepts Applied to Other Forms and Instructions

The IRS has applied numerous redesign concepts arising from the IRS/Xerox partnership. For example, the IRS is using icons, checkboxes, navigation aids, and chart design across as many of our products as feasible to assist taxpayers in understanding and completing tax forms.

Reordering of Credits on Forms 1040 and 1040A

For tax year 2000, IRS plans to reverse the order of the education credits line and the child tax credit line on these forms. This will allow filers claiming the child tax credit to figure that credit in a more logical manner (i.e., after they have figured any education credits). This reordering will also allow IRS to write simpler instructions because the Agency will not have to tell taxpayers to jump ahead to the education credits line, figure the credits, and then come back to the child tax credit computation.

Simplified Credit Calculation on Tax Year 2000 Form 8839, Adoption Credit

Instead of adding another line for credit carryforwards from 1999 to 2000, the IRS plans to eliminate that proposed line (and existing lines for carryforwards from 1997 and 1998) and replace it with one line for "carryforwards from a prior year." A worksheet in the instructions will let taxpayers calculate the amount to put on that line. The IRS plans to eliminate lines on the form for prior year credit carryforwards to 2001 (four lines eliminated).

Redesigned Form 8857, Request for Innocent Spouse Relief

The IRS released a new, easier-to-use and understand version of Form 8857, "Request for Innocent Spouse Relief." Filers are now guided through the various types of relief available (innocent spouse, separation of liability, and equitable relief) through the use of simple-to-answer questions with Yes/No checkboxes. The instructions were revised to clarify key points and definitions such as the difference between understatement of tax and underpayment of tax. The revisions reflect feedback from various sources, including focus groups held at the IRS' Austin Development Center.

Separate Form 1099 Instructions

The IRS improved the availability of filer instructions for tax year 2000 by providing separate Form 1099 instructions. Filers now only need to get the instructions for the information return they file. In prior years, all form instructions were part of a single booklet that was over 50 pages. Not only will filers have smaller documents with which to work, they will have them sooner.

Analyses to Simplify Filing

The IRS is exploring the number and types of errors made on forms. This should help us identify and target areas where the forms and instructions should be reviewed for change or improvement. The IRS has already developed a math error analysis of Form 1040. For 2000, IRS is initiating similar research activities on Forms 1120, 1120S, and 941.

The Tax Forms and Publications Division is working in partnership with the IRS Indiana District Office Research and Analysis (DORA) in the Simplifying Filing Research Strategy. This initiative will identify opportunities to move taxpayers to file simpler returns, improve tax forms and instructions through detailed analysis of where errors are being made on current forms, and minimize the number of taxpayers affected by proposed changes to tax forms and instructions. This strategy initially focused on individual taxpayers but has been expanded to include forms that small business taxpayers file.

Through its research, IRS discovered that many taxpayers file more complex tax forms than needed. There are several benefits to taxpayers filing the simplest tax return for their tax situation: reduced filing burden, processing costs, and printing and postage costs. IRS has developed data showing the number of taxpayers who incorrectly filed each type of 1040 form. Further research will be performed to determine what influenced these taxpayers to select the type of 1040 form they are currently filing and what IRS can do to help them choose the 1040 form best suited to their particular situation. This additional research will result in a comprehensive strategy and marketing plan to move taxpayers to simpler forms.

Draft Forms on the Internet

The IRS continued its electronic early release forms program by making the draft forms available on the IRS Internet site (www.irs.gov). The public can review and comment on the drafts, which allows the IRS to be more responsive to customers' needs and concerns. Last July, we also held the first IRS Forms Forum, at which we invited practitioners, small businesses and volunteer groups to provide feedback on individual and business returns.

REDUCE UNNECESSARY FILING PROGRAM

In an effort to reduce unnecessary filing, the IRS developed publications designed to help taxpayers determine if they must file a tax return. These Reduce Unnecessary Filing (RUF) publications are mailed primarily to the elderly, students and pension filers. The unnecessary filers fall into three primary taxpayer segments:

- Age 65 or older, who has no payments from which federal income tax was withheld.

- Age 65, or older, who receive pension income from which federal income tax was withheld.
- Age 15 to 23, who received wages from which federal income tax was withheld.

Listed below are the RUF Mailout volumes for the past three tax years.

Publication	***1997**	**1998**	**1999**
3136 – 15 to 23 year olds	N/A	1,154,000	3,315,502
3137 – People on a Pension	20,245	231,000	318,512
3195 – You May not need to File	557,533	598,000	538,503

Results

1997 – Unnecessary Filers Age 65 and Older

In 1997, the IRS sent 557,533 taxpayers a RUF letter informing them that they may not need to file based on their 1996 tax return information. These filers were identified to have no income tax and no withholding. Of them, 296,430 taxpayers did not file a 1997 Federal Income Tax Return, which translates to a 53.2 percent success rate. In addition, if we exclude the 131,559 taxpayers who filed a necessary return, this program can properly claim a success rate of 76.8 percent.

1997 – Pension Filers

In 1997, the IRS sent a RUF letter to 20,245 taxpayers pension filers whose withholding caused them to file an otherwise unnecessary return. Of these taxpayers, 2,576 did not file a 1997 Federal Income Tax Return; a success rate of 12.7 percent. If we exclude the 5,412 taxpayers who filed a necessary return, the overall success rate of this program was 39.5 percent.

Other Findings

In 1998, the IRS added the young filers (15-23 year olds) to the RUF program. Even though we have not performed an in-depth analysis of the effectiveness of the young RUF recipients, we anticipate 35 percent of them did not file a Federal Income Tax Return as instructed. In addition, we estimate that 50 percent of the young filers continued as unnecessary filers the following year.

The 1998 RUF tax return information is still being analyzed by the Indiana DORA, but they anticipate the numbers to be comparable to 1997.

Overall, the 1997 study results indicate that approximately 30 percent of the taxpayers receiving a RUF publication will have a filing requirement in the following tax year. Furthermore, approximately 23 percent of the RUF recipients will still file an unnecessary return despite receiving the notice. Therefore, a reduction in paperwork and processing costs does not occur for all the RUF recipients.

EMPLOYMENT TAX PAPERWORK AND BURDEN REDUCTION

Excise Tax – Form 2290, Heavy Vehicle Use Tax Return Initiative

Each year, the IRS sends out approximately 790,000 Form 2290 tax packages to taxpayers potentially liable for the tax. Research performed by the IRS Cincinnati Service Center determined that approximately 265,000 taxpayers receiving the package had not filed a Form 2290 for the past three years.

By analyzing our internal databases, the IRS was able to notify over 239,000 taxpayers that they may no longer be liable for the tax. This will have a significant impact on paperwork reduction. It takes approximately 30 minutes to read the Form 2290 filing instructions and determine if a liability exists. Multiplying this time by the 239,000 taxpayers, the IRS will reduce taxpayer burden by 119,793 man hours. There are 500,000 Forms 2290 filed annually with tax liabilities of $800 million dollars.

Automated System for Tracking Tips

As a result of our partnerships with the tip industry, businesses and associations, a significant portion of the food and beverage industry has implemented an automated system that tracks tips on a per-shift or daily basis and incorporates them into the withholding process on a weekly basis.

Prior to the automated system, employees were required to keep tip records on a daily basis on a worksheet. This worksheet was submitted monthly to the employers on the tenth of each month. The employer would then have to incorporate the employee-recorded data into wage and withholding records.

The new program provides for the employees to record the tips as they check out each day. The employees no longer have a paper-intensive, daily record-keeping requirement. The tip recording is part of an existing employer required checkout process. Employers no longer have a separate accounting to integrate into their books each month, nor a monthly reporting process. The tip reporting process is quickly becoming a transparent part of daily business for these industries.

Taxpayer Identification Number (TIN) Matching Program

The TIN Matching system under development will significantly decrease the number of notices requiring corrections to TINs and penalty notices for late filed, incorrect or missing TINs. In addition, this system will encourage businesses not currently filing electronically, or required to file electronically, to convert to electronic filing so that they can use the TIN Matching system to validate their TINs before submitting them to the IRS.

The TIN matching program will provide a match of user supplied information against IRS' files. The results provided are based on an exact match, and no validation or perfection is performed on the data. The TIN matching program will be open to all

payers, employers, Electronic Return Originators, tax preparers, and other governmental entities. Requestors with the appropriate limited power of attorney will also have access.

INTEREST & PENALTY ADMINISTRATION

FTD Threshold Increase

To provide additional burden relief to small businesses, the IRS also increased the threshold amount for quarterly tax deposits required on tax deposits from $500 to $1,000. This change means that almost one-third of the nation's 6.2 million small business employers will not have to deposit employment taxes, relieving them of the responsibility of making as many as 12 deposits annually. This change also reduces paperwork burden because, generally, these taxpayers used paper coupons to make these deposits.

ELECTRONIC

PIN Pilots

Millions of individual taxpayers used Personal Identification Numbers (PINs) to file totally paperless returns this year. The use of a PIN number eliminates the need to send a paper signature *jurat* to the IRS.

Through March 2, 2000, 3.7 million taxpayers have already participated in the Practitioner Signature Pilot where taxpayers choose a PIN when filing electronically through 18,000 participating practitioners. The March 2nd total was more than seven times the 500,000 PINs used for all of last year.

Another 700,000 taxpayers used e-file Customer Numbers (ECNs) to file using tax preparation software from their home computers. In December, the IRS mailed more than 11.5 million postcards with ECNs to people who did their taxes on a computer last year, whether they filed a paper or electronic return. By e-filing with the ECN, these taxpayers do not have to file any paper with the IRS. The ECN usage thus far this year already exceeds the 1999 total of 660,000.

Electronic Payments

A growing number of taxpayers are also enjoying the convenience of paying electronically. More electronic payment options (credit card and direct debit) have been made available to taxpayers this year, such as accepting debit payments through TeleFile and accepting credit cards for Forms 1040ES, estimated tax payments, and Forms 4868, extensions of time to file.

Through February 26, 2000, over 11,300 taxpayers chose the direct debit option where taxpayers can designate a checking or savings account at the time the return is filed and defer the debit until the due date of the return. Last year, 75,000 payments were made via direct debit.

Another 4,747 taxpayers used credit cards to pay their taxes. Taxpayers can charge their federal tax bill to an American Express, MasterCard, or Discover Card account by calling 1-888-2PAY-TAX (1-800-272-9829). In addition, a few software developers offer integrated *e-file* and pay combinations for individuals who want to pay their balance due with a credit card. This payment option is available to taxpayers who purchase tax preparation software and file their returns from a personal computer. Last year, over 53,000 tax payments were made via credit card.

Electronic Federal Tax Payment System

Approximately 2.8 million businesses are now enrolled in the Hammer-award winning Electronic Federal Tax Payment System (EFTPS) that allows taxpayers to make their federal tax deposits over the telephone or using a personal computer, eliminating the need for paper deposit coupons, checks, or trips to the bank. During FY 1999, over 55 million transactions, in excess of $1.3 trillion were made via EFTPS. Thus far in FY 2000 (through February 26, 2000), nearly 26 million transactions in excess of $610 billion were made through EFTPS.

Expansion of the Form 941 On-Line Filing Program

Since April 1998, small businesses that meet certain qualifications were able to file their Forms 941, "Employers Quarterly Federal Tax Return", using a touch-tone telephone. During FY 1999, over 915,000 quarterly employment tax returns were filed over the telephone by employers, in addition to 1,234,063 Forms 941 that were filed electronically by payroll service providers. In Fiscal Year 2000, the IRS expects 962,200 returns to be filed over the telephone and another 1,504,100 Forms 941 to be filed electronically. Over 220,000 employers participate in the TeleFile program, in addition to approximately 320,000 employers who participate in the Form 941 *e-file* program.

Beginning April 1, 2000, IRS offered the opportunity for employers to prepare and file their Form 941, "Employer's Quarterly Federal Tax Return", using their personal computer, modem, and off-the-shelf tax preparation software. The tax return information is transmitted to IRS through a third party. This program provides another option for filing Form 941 electronically, which will save time and reduce paperwork for employers.

Simplified Tax And Wage Reporting System (STAWRS)

Under STAWRS, the IRS is working with other federal agencies and states to reduce the wage and tax reporting burden on employers through initiatives such as the Single Point Filing projects conducted in Montana and Iowa. Approximately 80 Montana employers participated in each of the four test quarters by filing one quarterly (paper) return, Form MTQ/941, with the Montana Department of Revenue.

The employers used the Form MTQ/941 to report their Montana state withholding tax, Montana unemployment insurance tax, Federal withholding tax, and

Social Security and Medicare taxes. Montana extracted the Federal data, encrypted it and sent it via a secure gateway to the Tennessee Computer Center for processing. Based on the test results, Montana is planning for a phased-in implementation. It plans to offer the combined form to 5,000 additional employers each quarter until all employers in the state have the opportunity to participate. Montana is hopeful that half of their 30,000 employers will ultimately participate in combined filing.

The Iowa project was similar to the Montana project except that it involved electronic filing of the quarterly return rather than paper filing. Because of limitations with the pilot software, which was provided by the STAWRS Project Office through Iowa, only three employers participated in the pilot during the three test quarters.

Electronic Form W-4

The IRS is developing a computerized Form W-4 that will be simpler for employees to use and more accurate than the current paper Form W-4. Employees use the Form W-4 to tell their employers how much tax to withhold from their paychecks. The paper form helps employees determine either their correct number of withholding allowances (to avoid having too much withheld) or how much additional tax to withhold per-pay-period (to avoid having too little withheld).

Since the paper form has to accommodate most individuals' situations and requires the employee to perform several calculations, it is often burdensome and non-intuitive to use. Moreover, since the complex tax calculations must be approximated on the paper form, the amount actually withheld can deviate substantially from one's actual tax liability.

The electronic W-4 will be both easier to use and more accurate than the paper form by having the computer do the work and by customizing the calculations based on user input. Users will be prompted to enter only the information relevant to their situation (e.g., based on marital status, number of jobs, etc.), and the program will provide them with accurate withholding information. The program is being developed as a Web-based application, but can be distributed to employers in other forms as well.

Future versions may even be able to print out a completed Form W-4 at the conclusion of the program. In addition to reducing taxpayer burden, the electronic W-4 may help to reduce unexpected under-withholding, and therefore, may prevent many balance due and non-filing cases.

COMPLEXITY

In addition to paperwork reduction, the IRS believes that complexity must be addressed to effectively reduce taxpayer burden and improve taxpayer compliance – two key components of the IRS' mission.

Reducing complexity can reduce taxpayer burden by cutting the time and costs taxpayers face in meeting their tax obligations and increase compliance by making those

obligations easier to understand and meet. Reducing complexity also will make it easier for IRS employees to do their job of providing top quality service to taxpayers and ensuring that the taxes that are due are paid.

In fact, reducing complexity will aid the IRS in achieving all of its strategic goals: (1) service to each taxpayer, (2) service to all taxpayers, and (3) productivity through a quality work environment.

Burden results from taxpayers spending time and money trying to understand and meet their filing, reporting and payment responsibilities. Complexity adds to burden by increasing their investment in these areas trying to figure out if, and how specific provisions apply to them. Significant reductions in burden, as well as increases in compliance may be driven by relatively small simplification that affects many taxpayers.

By the same token, noncompliance can result from taxpayers' frustrations with the complexity faced when trying to obey the law. Individual taxpayers cope with complexity as best they can. Some struggle with it themselves, while others rely on tax preparation software or paid preparers.

When tax laws change, individuals often face uncertainty as to how to comply with the changes, especially if they are frequent, or if the individuals and IRS are given little time to prepare before the changes become effective.

Since 1986, when the Tax Code was rewritten for the first time in almost 30 years, there have been 78 tax laws enacted. Just one of these, the Tax and Trade Relief Extension Act of 1998, contained 25 sections of tax changes. Of these, 11 were effective retroactively and four were effective within 90 days of the end of the calendar year. The Earned Income Tax Credit (EITC) has been changed almost yearly for the past decade.

Situations such as these challenge both the IRS and taxpayers. The IRS needs to issue clear guidance and forms covering the changes in time for the next filing season. Taxpayers face the uncertainty that late changes pose to their current and future tax obligations. With short lead times, both the IRS and taxpayers have little time to become knowledgeable about the changes. This creates additional chances for error as well as heightened frustration and conflict.

Many taxpayers, tax practitioners, scholars, and stakeholders emphasize that even the simplest of changes to the Tax Code can have complex consequences if change is frequent and/or has a retroactive or short lead time for the effective date.

Frequent change increases the uncertainty that taxpayers face in tax planning, record keeping, and the filing of their returns. The inability to stay current has been cited by small business owners and individuals as a primary reason for their use of paid preparers.

In this regard, the IRS faces its own challenges in making sure its systems, training, and other employee tools are current and reflect the most recent legislation. In addition, because the time between when a return is filed and when it is audited may be one to two years, taxpayers and IRS employees must not only understand the current rules, but remember the old rules in order to deal with audit issues.

The enactment of provisions with retroactive or short effective lead times also increases complexity. Both taxpayers and the IRS frequently must act quickly to accommodate these changes. For the IRS, especially problematic are changes that come late in the calendar year when the forms and publications for the next filing season are ready to go or have gone to the printers. Short timeframes frequently do not allow the IRS to consult with taxpayers and other stakeholders in developing new forms. This can result in the forms being more difficult for taxpayers to understand or complete than they would be under normal circumstances.

Time limitations also may affect our ability to make the computer systems changes necessary to support statutory change. The Taxpayer Relief Act of 1997 and RRA 98 are good examples of statutes with many tax-related changes and short effective date lead times.

LONG-TERM

Mr. Chairman, while we have made some short-term improvements in paperwork and burden reduction for taxpayers, they barely scratch the surface of what we need to do for America's taxpayers, especially our small business taxpayers. Taxpayers need and deserve service that is tailored to their circumstances and is managed by people who understand their problems and work every day to reduce their tax administration burden. I believe that this is where and how we can make the most significant and meaningful gains in burden reduction.

Following Title I of the IRS Restructuring and Reform Act of 1998, the IRS is creating an organizational structure with operating units serving taxpayers with similar needs. We have created four Operating Divisions that will be fully responsible for all of the tax administration needs of specific, corresponding taxpayer segments. They are: the Wage and Investment Division; the Small Business/Self-Employed Division; Large & Mid-Size Business Division; and the Tax Exempt & Government Entities Division.

The Commissioner and Deputy Commissioners for all four divisions have been selected and sworn into office. The new divisions will become fully operational in stages, with Tax Exempt and Government Entities already operational since December. The Large and Mid-size Business Division became operational last month, and will be followed by the Wage and Investment and Small Business/Self-Employed Divisions in the fall of 2000.

Let me focus on the Small Business and Self-Employed Division, which is of most interest to the Subcommittee. The group of taxpayers served by this division

includes about 45 million filers who have four to 60 transactions with the IRS per year and represent nearly 44 percent of the total cash collected by the IRS.

The modernization concept gives us the greatest opportunity in decades to make the biggest improvements in the way we serve small businesses and reduce their overall tax administration burden.

I want to stress that this change is not just moving around the organizational boxes. It is designed to put in place a structure with a management team at its core that lives and breathes small business issues every day. And that team has the authority and responsibility to improve the way the whole tax system works for small business and self-employed taxpayers, including reducing paperwork and administrative burden.

This operating division will have three major components. The first is taxpayer education and assistance. It will work on the kind of programs to help small businesses understand their tax responsibilities without imposing undue burden. We have built into all of the business divisions the principle of working with taxpayers before they file their returns. We want taxpayers to get it right the first time. It is faster, more efficient, better for everyone and an accepted best business practice to prevent a problem rather than solve it.

The second component is a dedicated processing, customer service and accounting organization for small businesses and self-employed taxpayers. The third component will be post-filing operations. However, it will be dedicated not only to performing the traditional exam and collection work, but will strive to improve voluntary compliance which is our main goal. Should we have to intervene through the collection or exam process, we want to identify and act on these problems as quickly as possible.

Also key to reducing burden is moving taxpayers away from paper and updating our business practices and technology to better serve them. This is a massive project requiring an almost complete replacement of IRS' information technology systems. However, we have no choice. The systems we are using today are built on a 30-year-old, fundamentally deficient foundation that cannot provide accurate up-to-date information about taxpayer accounts, nor sustain modern business practices. Moreover, implementing new technology based on revamped business practices is critical to carrying out RRA 98's mandates and for providing meaningful taxpayer burden reduction across the board.

As I recently testified before the House Appropriations Committee, to succeed in this enormous and vital program, we must have adequate budget resources in FY 2001 to address critical operational needs and to invest in new technology to support best business practices. If Congress can provide continued and assured support for IRS modernization, such as that contained in our budget request, we will be able to produce the visible, tangible and meaningful changes in service, compliance and burden reduction that America's taxpayers expect and deserve. Thank you.

Mr. MCINTOSH. Thank you, Mr. Rossotti. As I said, your entire remarks will be put into the record.

Let me now recognize Mr. John Spotila, who is Administrator of the Office of Information and Regulatory Affairs. Welcome.

STATEMENT OF JOHN T. SPOTILA, ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

Mr. SPOTILA. Good morning, Mr. Chairman and Mr. Kucinich. You may not realize I'm also from Cleveland. I remember you well there and my family does as well and sends greetings. Thank you for inviting me here to discuss how the Federal Government can improve the quality of the information it collects, while reducing associated burden on the public. At OMB we understand the importance of helping agencies balance these objectives. Our fiscal year 2000 information collection budget, the ICB, highlights a number of these agency efforts. Although it shows there has been progress, clearly much more needs to be done.

We need information so that government can better serve the people. Better information can help us make better decisions about how well the Government is working, whether new services are needed, and whether existing programs are still necessary.

Indeed, providing information to citizens can be an important service in its own right. Investors need quick and easy access to SEC filings. Communities want to know if they have exposure to pollutants. Taxpayers expect the IRS to respond quickly to their questions. Often giving information to the public can eliminate the need for an expensive regulatory approach. Agencies like the Food and Drug Administration with nutrition labels, the SEC with corporate financial disclosures and the EPA with community right to know efforts rely on the disclosure of information to protect the public's health, safety, and welfare, without the need for further regulation.

Most of the information needs of the Federal Government flow from statutes passed by Congress. Some reflect agency decisions on what information they need to implement programs. New statutes can lead to new information requirements. The Taxpayer Relief Act of 1997 and the Tax and Trade Relief Extension Act of 1998, for example, made numerous changes to the Internal Revenue Code. These and other acts required new reporting requirements that increased the paperwork burden for taxpayers by some 150 million hours in fiscal year 1999. Similarly, the Balanced Budget Act of 1997 created the Medicare+Choice program at HHS with a new burden of almost 1.3 million hours in 1997 to determine eligibility.

While information plays a critical role in good government, the collection of that information imposes a cost on the public. It takes time to supply information. The Paperwork Reduction Act of 1995 emphasizes that, subject to statutory constraints, agencies must strike a balance, collecting the right information while not requiring what is unnecessary or unavailable. We agree that agencies should only collect necessary information and should always look for simpler, easier, and faster ways for citizens to provide that essential information.

As we describe in the ICB, agencies have been trying to improve the quality of Federal information collection while reducing burden. We are seeing progress. EPA intends a rulemaking in fiscal year 2000 that will reduce reporting requirements under the Resource Conservation and Recovery Act [RCRA]. It plans to lengthen periods between facility self-inspections, streamline paperwork and reduce the data collected. As proposed, the burden reduction could be 3.3 million hours, which, when added to previous reductions, would be a 40 percent reduction from the program's 1995 base lining.

The Federal Motor Carrier Safety Administration at DOT plans to complete a zero-based review of its motor carrier regulations this year. It expects to eliminate many regulatory requirements and information collections, streamlining most of the rest and leading to a 90 percent reduction in burden hours.

DOT and the Department of Labor both require truck drivers to record their driving time. DOT has required that drivers keep logs while DOL has required them to use time records. DOT now has decided to rely on DOL's time records. When its rulemaking action is finalized, it expects to eliminate more than 28 million hours of paperwork.

Raising reporting thresholds can also reduce burden hours. Under EPA regulations, businesses disclose information about chemicals on their premises to alert community members of any potential risks. These chemicals include gasoline and diesel fuel. Since we know that normal amounts of gasoline will be present at retail gas stations, EPA increased the threshold level for gasoline and diesel fuel for reporting, effectively exempting retail gas stations from reporting at all. This saved about 588,000 burden hours.

Agencies increasingly use electronic technology to streamline reporting and recordkeeping. Converting to a new electronic filing system that reduces by over two-thirds the time needed to file a shipper's export declaration cut burden by about 160,000 hours in 1999 and should reduce burden by another 47,000 hours this year.

Although agencies are working to minimize collection burdens, there is more to do. Their successes can be overcome by new information collections that are required by new statutory and program responsibilities. While information technology offers great potential for streamlining paperwork, we do not yet take full advantage of that potential. We need to broaden the public dialog on how to make further progress.

In this regard, OMB this month is launching a special initiative, with Federal agencies engaging small business owners and other interested parties in a cooperative effort to examine these problems and develop constructive solutions. This initiative will emphasize public input and participation. We are inviting hundreds of small business owners, academic experts, industry and public interest groups, representatives and other interested parties to participate in this endeavor.

They will join senior representatives from SBA and the participating agencies, IRS, EPA, OSHA, HCFA, DOT, the Department of Education and the Department of Agriculture, in a public forum on April 27th. After initial presentations that morning the agencies will hold roundtable sessions with our private sector participants.

We invite you and all members of the committee to attend if you would like, Mr. Chairman.

We will continue this work in the following months. Additional roundtables will take place as we search for new insight and new ideas. The roundtables will focus on best information collection practices and new ways of collecting information, particularly as agencies reengineer business processes to transact business and deliver services electronically. We would like the discussions to produce recommendations on how to improve the quality and reduce the burden of specific collections while also offering lessons that the agencies can apply more broadly.

We are particularly pleased to have the full cooperation of the IRS in this endeavor. It has agreed to hold three of these full day roundtables. This is an important undertaking. We intend to proceed in a focused way and will look to develop recommendations by midsummer of this year. We welcome the committee's participation and support for the initiative and certainly will make available to you the results of our efforts. We appreciate this opportunity to work with you on these issues. We know that our efforts are important to the American people.

Thank you.

[The prepared statement of Mr. Spotila follows:]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

STATEMENT OF JOHN T. SPOTILA
ADMINISTRATOR
OFFICE OF INFORMATION AND REGULATORY AFFAIRS
OFFICE OF MANAGEMENT AND BUDGET
before the
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS
COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
April 12, 2000

Good morning, Mr. Chairman and members of the Subcommittee. Thank you for inviting me here to discuss how the Federal Government can improve the quality of the information it collects, while also reducing the burden such collection imposes on the public. We understand the vital importance of striking a reasonable balance in this regard and are working closely with the agencies to help them do a better job. Our FY 2000 Information Collection Budget (the ICB) highlights a number of these agency efforts. Although there has been progress, it is clear that much more needs to be done.

The Federal Government's collection and use of information are essential so that it can best serve the people. Agencies can only deliver services to individuals if they know who they are, what they need, and what they want. Better information can help agencies make better decisions about how well the government is working, whether new services are needed, and whether existing programs are still necessary.

Indeed, the government's provision of information to its citizens can be an important service in its own right. In the Information Age, the public needs timely, accurate information. Investors need quick and easy access to public filings at the SEC. Residents want to know if they have exposure to pollutants in their community. Taxpayers expect quick responses from the

IRS and fast income tax refunds.

Often, when the government collects and disseminates information to the public it can eliminate the need for an expensive regulatory approach. Agencies as diverse as the Food and Drug Administration (with nutrition labels), the SEC (with corporate financial disclosures), and the Environmental Protection Agency (with Community Right to Know efforts) rely on the disclosure of information to protect the public's health, safety, and welfare, without the need for further regulation.

Most of the information needs of the Federal Government flow from statutes passed by Congress. Some requirements reflect agency decisions on what information they need to implement programs. New statutes can lead to new information requirements. The Taxpayer Relief Act of 1997 (TRA) and the Tax and Trade Relief Extension Act of 1998 , for example, made numerous changes to the Internal Revenue Code. These Acts required the IRS to add and revise reporting requirements that increased paperwork burden for taxpayers by approximately 150 million hours in FY 1999. These changes included the new Form 8863, Education Credits, which is used by taxpayers to calculate the education, HOPE, and Lifetime Learning Credits that were created by the TRA. Similarly, the Department of Health and Human Services uses the Medicare+Choice (M+C) Program Requirements – which imposed a new reporting burden of almost 1.3 million hours in FY 1997 – to determine eligibility for the M+C Program, which was created by the Balanced Budget Act of 1997.

While information plays a critical role in good government, the collection of that information imposes a cost on the public. It takes time to supply information to the government. The Paperwork Reduction Act of 1995 (the PRA) includes in its definition of "burden" the hours that respondents spend in answering Federal questionnaires. Subject to existing statutory requirements and constraints, the PRA emphasizes that agencies must strike a balance, collecting the right information to meet their responsibilities to the public while not requiring information that is unnecessary or unavailable. In their exercise of discretion, agencies should collect only

information necessary to their mission. They should ensure that they are collecting information once, not redundantly. They should always look for simpler, easier, and faster ways for citizens to provide essential information.

As we describe in the ICB for FY 2000, agencies have been making serious efforts to improve the quality of Federal information collection and to reduce burden. They have even begun to assess information needs and burden concerns in the regulatory process. Agency Chief Information Officers (CIOs) and their staffs are now involved earlier in the process, helping program offices to design their information collections to strike the right balance. For example, in FY 1999, the Department of Labor revised its regulatory review procedures to elevate the role of the CIO in the regulatory clearance process, helping to ensure that proposed and final rules impose only the minimum necessary burden on the public.

Agencies employ a variety of tools to make information collection more efficient. EPA intends to propose a rulemaking in FY 2000 that will reduce reporting requirements under the Resource Conservation and Recovery Act (RCRA). It plans to lengthen periods between facility self-inspections, revise personnel training, streamline land disposal restrictions paperwork, and reduce the data collected by RCRA's biennial report. As proposed, the burden reduction could be 3,300,000 hours, which when added to previous reductions, would be a 40% reduction from the program's FY 1995 baseline.

As another example, the Federal Motor Carrier Safety Administration (FMCSA) has engaged in an ambitious streamlining initiative for several years. It plans to complete a zero-based review of its motor carrier regulations in FY 2000. The agency indicates the revision eliminates or combines many regulatory requirements and information collections, and streamlines most of the rest. FMCSA estimates there will be a 90% reduction in burden hours when it completes the review.

Sometimes two or more agencies regulate different aspects of the same activity and use separate, duplicative information collections. The Department of Transportation (DOT) and the Department of Labor (DOL) both require truck drivers to record their driving time. DOT has required the drivers to keep driver logs, while DOL has required them to use time records. DOT has decided to rely on DOL's time records. By canceling the requirement for drivers operating within 100 miles of their normal work site, DOT eliminated 660,000 reporting hours. DOT soon will publish a proposed rulemaking to do the same thing for intrastate drivers operating further than 100 miles from the work site, which would produce an estimated 28,000,000-hour reduction.

Raising reporting thresholds is another appropriate way to reduce aggregate burden hours when circumstances warrant. Under EPA's Community Right To Know regulations, businesses must disclose information regarding the quantity and toxicity of various chemicals present on business premises so that members of the community may be made aware of any potential risks from the chemicals. Gasoline and diesel fuel were among the substances to be reported. Since normal amounts of gasoline are expected to be present at retail gas stations, EPA increased the reporting threshold level for gasoline and diesel fuel, effectively exempting retail gas stations from reporting. This saved gasoline retailers about 588,000 burden hours.

Agencies increasingly are using electronic technology to streamline reporting and record keeping. Often, the availability of electronic reporting reduces burden hours, even if nothing else in the collection or process changes. Shipper's Export Declarations are the source for the official U.S. export statistics compiled by the Bureau of the Census. The agency has developed an electronic filing system that reduces by over two-thirds (from 11 minutes to 3 minutes) the time needed to file an export declaration. After extensive marketing and outreach by the agency, significant numbers of exporters are switching from paper to the electronic filing. This has reduced burden by approximately 160,000 hours in FY 1999 and should reduce burden by another 47,000 hours during FY 2000 as more exporters adopt the electronic process.

Sharing information reduces burden. The Department of Labor's Pension Welfare Benefit Administration (PWBA), the IRS, and the Pension Benefit Guaranty Corporation (PBGC) share the information reported on ERISA Form 5500, the annual report filed with PWBA by approximately 900,000 pension plans. Form 5500 previously was filed on paper with the IRS. Beginning with 1999 plan year filings in July 2000, Form 5500 will be filed with PWBA. Reporters will have the option to file electronically using EFAST, an interactive "intelligent" filing program. The software reduces the time it takes to complete the report and improves accuracy. It has built-in consistency and accuracy checks so reporters can avoid making and having to correct errors. PWBA estimates plan administrators will save 560,000 burden hours and $16,351,000 annually when the system is fully implemented. In addition, PBWA, the IRS, and PBGC have conducted an extensive review of Form 5500 and have agreed to eliminate unnecessary data elements and simplify many that remain. PWBA estimates the streamlining alone will save pension plans $40,540,000 annually. You can find other examples of specific reductions in reporting and recordkeeping requirements that agencies have accomplished since last year, and the agency plans for reductions envisaged for FY 2000 in Chapter 3 of the FY 2000 ICB.

Please note in this context that our effectiveness in reducing the time the public spends on information collections cannot be captured simply by looking at burden hours. We seek not only to streamline existing collections and end unnecessary ones, but also to streamline or prevent new collections. At times, agency successes go unrecognized in our reporting under the PRA. An agency's decision to select the least burdensome alternative when implementing a new statute will still represent an increase in burden hours under the PRA. Even though the burden is less than it would have been under any other alternative, the agency reports the statutory implementation as adding to paperwork burdens. We need to exercise care in evaluating the burden hours listed in the ICB. They give us a broad picture of the information collection effort, but not a perfect one.

Although agencies are working hard to minimize collection burdens, we recognize that they have not solved the entire problem. Their successes in burden reduction are often overcome by new information collections that are required by new statutory and program responsibilities. We know that information technology offers great potential for streamlining paperwork, but we do not yet take full advantage of that potential. The solution in part is to broaden the dialogue on how to make further progress. In this regard, OMB is launching a special initiative -- to work with small businesses and other interested parties, in a cooperative way with Federal agencies, to examine these overall problems and to develop workable and constructive solutions to them.

This initiative will emphasize our desire for public input and participation. We will focus on improving the quality of the information the government collects, while minimizing the collection burden, particularly through the use of information technology. We will describe current agency practices and highlight issues common to government. We expect to explore best information collection practices and new uses of technology to help us balance information collection with the minimization of burden.

We are in the process of inviting hundreds of small business owners, academic experts, industry and public interest groups representatives, and other interested parties to participate in this endeavor. We expect to hold a public Forum on April 27, 2000, in Washington. I invite you, Mr. Chairman, and all members of the committee, to attend. We will bring together senior representatives from the participating agencies -- the Internal Revenue Service, Environmental Protection Agency, Occupational Safety and Health Administration, Health Care Finance Administration, Department of Transportation, Department of Education, and Department of Agriculture. After initial presentations that morning, most of the agencies will hold roundtable sessions with our private sector participants. Additional roundtables will take place on subsequent dates.

We are hopeful that this collective effort will give us new insight and new ideas. The roundtables will focus on best information collection practices and new ways of collecting

information, particularly as agencies re-engineer business processes to transact business and deliver services electronically. We expect the discussions to produce recommendations on how to improve the quality and reduce the burden of specific collections while also offering more general lessons that the agencies can apply more broadly.

We are particularly pleased to have the full cooperation of the IRS in this endeavor. It has agreed to hold three full-day roundtables. The first of these will focus on the self-employed. It will discuss the different elements of burden and identify what the IRS can do to address each element, including the potential of various electronic technologies to decrease the time and costs incurred by the self-employed in preparing and filing their Federal income tax returns. At a second session, the IRS and our private sector participants will discuss the burden faced by small businesses and the self-employed in preparing and filing their Federal employment tax returns. They will consider ideas on how to streamline the process and use information technology to make it easier and faster to submit returns. At a third session, the subject will be the post-filing burden incurred by taxpayers and how it can be measured and reduced.

OSHA will have a roundtable on Certifying Regulatory Compliance. OSHA is considering revoking some or all of the certification records it requires from employers, if doing so would reduce unnecessary paperwork without diminishing employee protection. The roundtable will discuss the impact of any revocation on safety, burden, and enforcement. It will also explore other paperwork requirements that the agency could eliminate without jeopardizing the safety and health of workers.

USDA will host a roundtable to discuss its Service Center Initiative. This is an effort by USDA's county-based agencies (Farm Service Agency, Natural Resources Conservation Service, and Rural Development) to provide one-stop service for farm programs and farm credit, conservation programs, and rural loans and grants. This effort has encountered a myriad of challenges and difficulties that illustrate the problems faced by many agencies in maximizing the benefits of technology in collecting information. Agencies must change business processes,

integrate legacy systems, develop technical standards, protect privacy and security, and learn entirely new ways of doing businesses and interacting with customers. USDA will have a frank discussion with its constituents on where it is going and how it intends to get there.

This initiative also will provide an important opportunity for each of the agencies to discuss how better to work together. We will discuss ideas on how to use information technology to support transactions and to enhance the quality and availability of information. We plan an inter-agency roundtable to review current information technology best practices and to examine how best to share information so as not to duplicate information available within the same agency, from other agencies, or from the private sector.

This is an important undertaking. We intend to proceed in a focused way and will look to develop recommendations by mid-summer of this year. We welcome the Committee's participation and support for the initiative and certainly will make available to you the results of our efforts.

We appreciate this opportunity to work with you on these issues. We know that they are important to the American people. Thank you.

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APPENDIX

In the Chairman's letter of invitation dated February 17, 2000, he asked that OMB provide information about substantive changes made by OMB to agency paperwork submissions during the period of July 1, 1999, to December 31, 1999, as well as any "paperwork reduction candidates added by OMB" during this period. Over the past year, he has made similar requests for this information, terming it necessary for oversight of OMB's activities under the Paperwork Reduction Act.

We respect and appreciate the Committee's oversight role and understand its need for information. We have provided such information in response to each of these requests. This information documented cases in which OMB made a "substantive change" to a collection, that is, when it has disapproved a collection or when an agency has withdrawn a collection during OMB's review. We provided specific listings of individual collections of information that were disapproved or withdrawn, as well as the computerized "paperwork docket displays" for each collection, giving additional details about OIRA reviews. We have not been able to detail all specific changes made (e.g., deleted questions, less frequent reporting) and by whom (OMB or the collecting agency).

This approach makes available the information in OMB's possession. OMB does not maintain and has never maintained more detailed information. To do so, OIRA staff would have to determine which agency – OMB or the agency – should be given "credit" for a substantive change made to a proposed information collection. We do not believe assigning credit would help promote the aims of the PRA, nor does the PRA require it. In fact, disclosure of such informal interagency staff discussions could convert what is a collegial, non-confrontational, sharing of ideas and suggestions into a more antagonistic, more formal, and more rigid negotiation that would undermine the very efforts we are trying to foster – the identification of areas of opportunity for better quality and less burdensome information collections.

OMB's recordkeeping and disclosure practices date back to 1980 when the Reagan Administration first implemented the PRA, and we are convinced that they still serve us well as we focus on the bottom line: reducing the Federal Government's paperwork. OIRA has always sought to provide the public and Congress with information about the status and results of OIRA's reviews and – thanks in part to suggestions you have made – we feel we have improved our performance in this area, particularly with respect to information we make available on OMB's website. We are always willing to consider additional suggestions on how we can make improvements. If you have further suggestions, we will be happy to consider and discuss them with you.

Mr. MCINTOSH. Thank you, Mr. Spotila.

Let us now turn to Ms. Kingsbury. If you would summarize your testimony for us, and the entire testimony will be put into record. Thank you.

STATEMENT OF NANCY KINGSBURY, ACTING ASSISTANT COMPTROLLER GENERAL FOR THE GENERAL GOVERNMENT DIVISION, GENERAL ACCOUNTING OFFICE

Ms. KINGSBURY. I'll be happy to do that, Mr. Chairman. We appreciate the opportunity to be here to talk about our work on the implementation of the Paperwork Reduction Act. As you know, we have been doing it for some time and testified in some of your previous hearings and we're always happy to do that.

Although the PRA envisioned a 30 percent reduction in Federal paperwork burden between fiscal years 1995 and 1999, our review of this year's information collection budget indicates, as you observed in your opening statement, that paperwork burden has increased during this period. Overall, after small changes during fiscal years 1996 to 1998, Federal paperwork burden increased by 233 million burden hours during fiscal year 1999 alone, the largest increase in any 1 year period since the passage of the act. If projections of fiscal 2000 are realized, this record will not stand for long. Paperwork burden is expected to grow again in 2000 by an estimated 263 million hours.

Nearly 90 percent of the governmentwide increase during fiscal year 1999 was attributable to increases at IRS, as Mr. Rossotti has described. One agency, DOD, appears to have exceeded the burden reduction goals envisioned in the PRA by 5 percent for fiscal year 1999. Another agency, the Department of Agriculture, also seems to have done so, but further analysis indicates that the reductions were largely due to expiring authorizations for information collection, a matter I'll discuss further in a moment.

Some other agencies reported smaller reductions, but it is not clear whether those reductions are meaningful and some evidence suggest they may not be in some cases.

The paperwork burden process recognizes that some increase may occur because of newly authorized activities or programs that require information from the public to implement. However, the process also encourages agencies to carry out their responsibilities with the minimum burden possible and to continue to seek ways to reduce existing burden; that is, by taking nonstatutory actions as they are recorded in OMB's counting system.

In that regard we note that non-Treasury, mainly non-IRS agencies showed a growth of more than 4 million burden hours in fiscal year 1999 from such nonstatutory actions rather than the reductions one might expect.

We have expressed concern in the past that many Federal agencies were in violation of the PRA because they collected information from the public without OMB approval or because their approval to collect information lapsed after OMB's authorization has expired. At last year's hearing OMB said that it would address this issue. Nonetheless the problem of PRA violations continued in 1999.

OMB's information collection budget identifies about 700 violations by 27 agencies in fiscal year 1999; that is, self-reported failures on the part of the agencies to have their information collection activities approved under the act. The real number may actually be larger because there's no way to ensure the timely approval is sought for all the collections that are initiated and OMB may simply be unaware of some. Because of the way in which OMB counts paperwork burden when an authorized collection lapses and is not renewed, the associated burden counts as a burden reduction for purposes of reporting to the Congress. If the collection is subsequently reapproved in a future year it would be recorded as a burden increase in that year.

Meanwhile, the affected citizens have been burdened all along and the data available to Congress for decisionmaking about paperwork burden are clearly inaccurate and in some serious ways it is misleading. There are also reported instances of information collections being initiated without obtaining prior approval of OMB, as PRA requires. These would be very real increases in public paperwork burden that are not authorized and not recognized in the data provided to Congress. We recognize that OMB discloses these violations in its report, but this perverse counting practice distorts the overall numbers that Congress uses to determine if paperwork burden is in fact increasing or decreasing.

At the request of your staff and based on some data that became available in the last couple of days, we developed a rough estimate of the largest information collection burdens or the cost of them imposed by the violations of PRA that were reported in the 1999 information or 2000 information collection budget; that is, those estimated to be 100,000 hours annually or more. Using an OMB estimate of the opportunity costs associated with each hour of paperwork burden that we used, a more limited but similar estimate last year, we calculate that these large unauthorized information collections imposed nearly $4.8 billion in lost opportunity cost on the public from 96 collections in fiscal year 1999.

A part of the problem of incomplete burden estimates and PRA violations clearly lies with the agencies involved. The evidence shows that some agencies have very small numbers of violations despite relatively larger numbers of approved information collections. But we believe OMB and the agencies could do more to avoid or eliminate violations. When we raised this issue with OMB, OIRA officials told us that they notify agencies of information collections that are scheduled to expire soon but they have no authority to require agencies to come into compliance. We don't believe that OIRA is as powerless as this explanation would suggest and both last year and this year we suggested actions they could take to encourage agencies to come into compliance.

For example, we suggested that OMB could issue public notices in the Federal Register to the affected public that they need not provide agencies the information requested in expired information collection. OMB told us that they had taken some steps, such as discussing paperwork burden problems with CIOs and the President's Management Council, but for example they had not issued the suggested public notices. We've also suggested that they consider informing the Vice President, who has overall responsibility

for information—or for regulatory affairs but they also said they had not done that.

I think with that, since Mr. Rossotti has pretty well covered the IRS side of this story, Mr. Chairman, I'll stop here and we'll handle the rest of these matters in questions.

[The prepared statement of Ms. Kingsbury follows:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, Committee on Government Reform, House of Representatives

For Release on Delivery
Expected at
10:00 a.m. EDT
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April 12, 2000

PAPERWORK REDUCTION ACT

Burden Increases at IRS and Other Agencies

Statement of Nancy Kingsbury
Acting Assistant Comptroller General
General Government Division

GAO/T-GGD-00-114

Statement

Paperwork Reduction Act: Burden Increases at IRS and Other Agencies

I am pleased to be here today to discuss the implementation of the Paperwork Reduction Act of 1995 (PRA). As you requested, I will initially discuss the changes in federal paperwork burden since last year's hearing, with particular attention to changes at the Internal Revenue Service (IRS). I will then briefly discuss IRS burden-relief initiatives that are directed at small businesses and revisit the issue of PRA violations that we discussed during last year's hearing.[1]

In brief, although the PRA envisioned a 30-percent reduction in federal paperwork between fiscal years 1995 and 1999, preliminary data indicate that paperwork has increased during this period, and that the increase is primarily attributable to IRS. Federal paperwork increased by about 233 million burden hours during fiscal year 1999 alone—the largest increase in any 1-year period since the PRA was enacted.[2] Nearly 90 percent of the governmentwide increase during fiscal year 1999 was attributable to increases at IRS, which IRS said was primarily a result of new and existing statutory requirements. Some non-IRS agencies appear to have exceeded the burden-reduction goals envisioned in the PRA. Although some of these reductions reflect substantive program changes, others are revisions to the agencies' previous burden estimates or are the result of violations of the act, and therefore will have no effect on the paperwork burden felt by the public.

Federal agencies identified 710 violations of the PRA during fiscal year 1999—fewer than the 872 violations that were identified during fiscal year 1998. However, problems in last year's data make it unclear whether the number of violations is really going down. Even if the number of violations is going down, 710 PRA violations during fiscal year 1999 is far too many. As we said last year, we believe that the Office of Management and Budget (OMB) can do more to ensure that agencies do not use information collections without proper clearance. We also believe that other federal agencies have a role to play in reducing the number of PRA violations.

Background

Before discussing these issues in detail, it is important to recognize that at least some federal paperwork is necessary and can serve a useful purpose. Information collection is one way that agencies carry out their missions. For example, the IRS needs to collect information from taxpayers and

[1] Paperwork Reduction Act: Burden Increases and Unauthorized Information Collections (GAO/T-GGD-99-78, Apr. 15, 1999).

[2] In this testimony, we use the term "during fiscal year 1999" to refer to the period between September 30, 1998, and September 30, 1999.

their employers to know the amount of taxes owed. The Bureau of the Census recently distributed census forms to millions of Americans that will be used to apportion congressional representation and for a myriad of other purposes.

However, federal agencies have an obligation under the PRA to keep the paperwork burden they impose as low as possible, given their statutory and programmatic responsibilities. The original PRA of 1980 established the Office of Information and Regulatory Affairs (OIRA) within OMB to provide central agency leadership and oversight of governmentwide efforts to reduce unnecessary paperwork and improve the management of information resources. Under the act, OIRA has overall responsibility for determining whether agencies' proposals for collecting information comply with the act.[3] Agencies must receive OIRA approval for each information collection request before it is implemented. OIRA is also required to keep Congress "fully and currently informed" of the major activities under the act, and must report to Congress on agencies' progress toward reducing paperwork. To do so, OIRA develops an Information Collection Budget (ICB) by gathering data from executive branch agencies on the total number of "burden hours" OIRA approved for collections of information at the end of the fiscal year and agency estimates of the burden for the coming fiscal year. OIRA published its ICB for fiscal year 1999 (showing changes in agencies' burden-hour estimates during fiscal year 1998) just before last year's hearing. OIRA officials provided us with a copy of the fiscal year 2000 ICB last week. We used that information and the agencies' ICB submissions to identify changes in governmentwide and agency-specific burden-hour estimates during fiscal year 1999.

"Burden hours" has been the principal unit of measure of paperwork burden for more than 50 years, and has been accepted by agencies and the public because it is a clear, easy-to-understand concept. However, it is important to recognize that these estimates have limitations. Estimating the amount of time it will take for an individual to collect and provide information or how many individuals an information collection will affect is not a simple matter. Therefore, the degree to which agency burden-hour estimates reflect real burden is unclear. Nevertheless, these are the best indicators of paperwork burden available, and we believe they can be useful as long as their limitations are kept in mind.

[3]The act requires the Director of OMB to delegate the authority to administer all functions under the act to the Administrator of OIRA but does not relieve the OMB Director of responsibility for the administration of those functions. Approvals are made on behalf of the OMB Director. In this testimony, we generally refer to OIRA or the OIRA Administrator wherever the act assigns responsibilities to OMB or the Director.

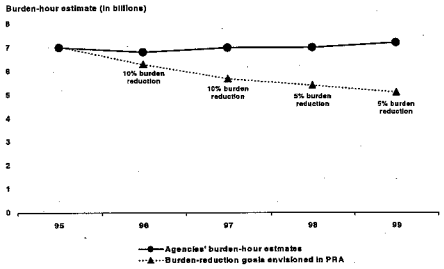
Federal Paperwork Burden Estimate Continues to Increase

Federal agencies estimated that their information collections imposed about 7 billion burden hours on the public at the end of fiscal year 1995—just before the PRA of 1995 took effect. The PRA made several changes in federal paperwork reduction requirements. One such change required OIRA to set a goal of at least a 10-percent reduction in the governmentwide burden-hour estimate for each of fiscal years 1996 and 1997, a 5-percent governmentwide burden reduction goal in each of the next 4 fiscal years, and annual agency goals that reduce burden to the "maximum practicable opportunity." Therefore, if federal agencies had been able to accomplish the reduction in burden contemplated by the PRA for the 4-year period ending on September 30, 1999, the 7 billion burden-hour estimate would have fallen 30 percent, or to about 5 billion hours.

However, as figure 1 shows, the data reported by the agencies indicate that the anticipated 30-percent reduction in burden during this 4-year period did not occur. In fact, the governmentwide burden-hour estimate increased by nearly 3 percent during this period, and was about 7.2 billion hours as of September 30, 1999.[4] During fiscal year 1999 alone, the estimate increased by about 233 million hours—the largest increase in any year since the PRA was enacted in 1995.

[4] The data from the fiscal year 2000 ICB (shown in table 1of this testimony) indicates that the governmentwide burden-hour estimate for fiscal year 1999 was 7,183.9 million burden hours. However, that figure does not include about 16 million burden hours from agencies not listed in the table. Therefore, the actual governmentwide burden-hour estimate for fiscal year 1999 was about 7,200 million burden hours.

Figure 1: Changes in Estimated Governmentwide Burden-Reduction Goals



Note: Data are as of the end of each fiscal year.

Source: OMB.

The record burden-hour increase during fiscal year 1999 may not be a record for very long. The new ICB indicates that federal paperwork is expected to increase by more than 260 million burden hours during fiscal year 2000—about 30 million hours more than the increase during fiscal year 1999. By September 30, 2000, the governmentwide paperwork estimate is expected to be nearly 7.5 billion burden hours.

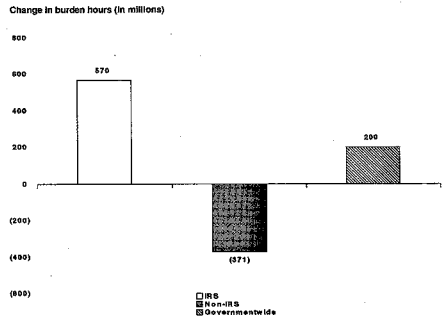
Governmentwide Increase Largely Attributable to IRS

A variety of factors appear relevant in explaining why federal paperwork burden estimates have not declined during the past 4 fiscal years. However, as we said last year, the primary reason seems to be IRS' inability to reduce its estimated burden. IRS accounts for about 80 percent of the governmentwide burden-hour estimate. Therefore, changes in IRS' estimate can have a highly significant—and even determinative—effect on the governmentwide total.

As figure 2 shows, IRS' burden-hour estimate increased by 570 million burden hours between fiscal years 1995 and 1999—from less than 5.3 billion burden hours to nearly 5.9 billion hours. This increase in IRS' estimate more than offset the 371 million burden hours of reductions in all of the other agencies, and was largely responsible for the nearly 3-percent increase in the governmentwide paperwork estimate. During fiscal year

1999 alone, IRS' paperwork estimate increased by more than 203 million burden hours. However, unlike in previous years, the increase in IRS' burden-hour estimate during fiscal year 1999 was not offset by lower estimates in the non-IRS departments and agencies. In fact, non-IRS agencies collectively increased their burden estimates by nearly 26 million burden hours during fiscal year 1999.

Figure 2: Change in IRS, Non-IRS, and Governmentwide Burden-Hour Estimates Between Fiscal Years 1995 and 1999



Note: The governmentwide burden-reduction goal for this 4-year period was 30 percent.

Sources: OMB and the Department of the Treasury.

According to IRS, increases in its burden-hour estimates are primarily driven by statutory changes and the requirements in existing statutes. For example, IRS said in its ICB submission for the fiscal year 2000 ICB that the Taxpayer Relief Act of 1997 (P.L. 105-34) and the Tax and Trade Relief Extension Act of 1998 (P.L. 105-277) had increased the agency's paperwork requirements by nearly 93 million burden hours during fiscal year 1999 alone. Specific elements of this increase include the following:

- IRS added several new lines and worksheets in the instructions to Form 1040 and accompanying schedules for, among other things, (1) the student loan interest deduction to reflect new Code section 221, (2) the child tax

credit to reflect new Code section 24, (3) the education credits (the HOPE and Lifetime Learning Credits) to reflect Code section 25A, and (4) the additional (refundable) amount of the child tax credit to reflect new Code section 32(n). Taken together, IRS said these new sections created by the Taxpayer Relief Act resulted in nearly 39 million additional burden hours to its estimate for Form 1040.

- IRS added lines and worksheets to the instructions for Form 1040A to implement the same changes to the tax code created by the Taxpayer Relief Act that I described in the previous example, resulting in more than 24 million additional burden hours.
- IRS added new attachments and Code references to the instructions for Form 1120S, Schedule D, and Schedule K-1 primarily due to the Taxpayer Relief Act, resulting in an increase of more than 11 million burden hours.

Statutory requirements can also prompt reductions in federal paperwork burden. For example, the only significant burden reduction that IRS identified in its submission for the fiscal year 2000 ICB was a 4.7 million hour reduction caused by changes made by the Taxpayer Relief Act that allowed most taxpayers to exclude gain on home sales after May 6, 1997, thereby making the filing of Form 2119 unnecessary.

Overall, though, IRS said that more than 148 million of the 203 million burden-hour increase that occurred during fiscal year 1999 was due to new statutes. Most of the remaining increase was caused by adjustments that IRS said was driven by growth in the economy. IRS attributed only a small part of the increase during fiscal year 1999 (about 14 million burden hours) to agency actions. As they have done in previous years, IRS officials told us that the agency would not be able to reduce its paperwork burden if new statutes requiring information collections continue to be enacted and unless changes are made to the substantive requirements in the current tax code.

Non-IRS Agencies' Burden Reduction Results Varied, and Require Careful Interpretation

As I previously mentioned, non-IRS departments and agencies reduced their estimated paperwork burden by 371 million burden hours, or nearly 22 percent, between fiscal years 1995 and 1999. However, some agencies were clearly more successful in reducing their estimates than others. For example, the Department of Agriculture (USDA) reduced its burden-hour estimate by 47 percent during this 4-year period, from 131 million hours to about 68 million hours. The Departments of Defense (DOD), Labor (DOL), and Veterans Affairs (DVA) had similarly impressive reductions during the period. On the other hand, the Department of Health and Human Services' (HHS) estimate increased by nearly 12 million burden hours, or nearly 8 percent between fiscal years 1995 and 1999. The Environmental

Protection Agency's (EPA) estimate increased by nearly 10 percent—from less than 109 million burden hours to about 119 million hours.

However, these changes in agencies' bottom line burden-hour estimates do not tell the whole story. At least as important is understanding how the agencies accomplished these results. OIRA classifies modifications in agencies' burden-hour estimates as either "program changes" or "adjustments." Program changes are (1) the result of deliberate federal government action and (2) additions or reductions to existing paperwork requirements that are imposed either through new statutory requirements or an agency's own initiative (e.g., the addition or deletion of questions on a form). Adjustments are not the result of deliberate federal government action, but rather are caused by factors such as changes in the population responding to a requirement or agency reestimates of the burden associated with a collection of information.

Understanding and distinguishing between these categories is an important part of overseeing agencies' paperwork reduction claims. For example, we recently published a report that, in part, examined EPA's claim that it had reduced its paperwork requirements by 24 million burden hours between fiscal years 1995 and 1998.[5] In its annual report, EPA claimed that it had accomplished these reductions by "streamlining processes, eliminating outdated provisions, and consolidating duplicative requirements"—in other words, program changes. We examined 13 information collections that accounted for more than 70 percent of EPA's claimed reductions and concluded that a substantial portion were (1) revisions of previous agency estimates that had no impact on the burden borne by the public or (2) were other kinds of adjustments because of changes in the economy or respondents' technology for which EPA should not claim credit. Therefore, we concluded that EPA's claims regarding how it had reduced its estimate and that its efforts had saved businesses and communities hundreds of millions of dollars were misleading.

The summary table in the ICB for fiscal year 1999 reflected, for the first time, the program changes and adjustments made in each agency. Therefore, readers could better understand what caused changes in an agency's burden-hour estimates from the previous year. However, these broad "program change" and "adjustment" categories can, themselves, mask a number of meaningful differences. For example, a 1 million hour

[5]EPA Paperwork: Burden Estimate Increasing Despite Reduction Claims (GAO/GGD-00-59, Mar. 16, 2000). These reductions were more than offset by additions to EPA's collections, resulting in a net gain of about 10 million burden hours during this period.

reduction in an agency's burden estimate that is characterized as a program change may have been caused by aggressive action on the part of the agency to eliminate unnecessary requirements or by changes in the underlying statute that the agency simply carried out.

Agencies may also be credited with program changes even though they are violating the PRA. For example, suppose that an agency's OIRA authorization to administer 1 million burden-hour information collection lapses but the agency continues to collect the information. The summary table in the ICB will show a 1-million burden-hour reduction that OIRA considers a program change because the ICB counts the burden associated with authorized information collections. If the agency subsequently obtains OIRA approval to collect the information, the 1 million burden hours would be reinserted into the agency's burden-hour estimate, and would also be identified as a program change.

Changes in Agencies' Recent Burden Estimates Varied

The fiscal year 2000 ICB indicates, for the first time, whether each agency's program changes were due to (1) new statutes,[6] (2) expired or reinstated collections, or (3) agency actions (e.g., the addition or removal of information collection requirements at the initiation of the agency). Using that information and information from the fiscal year 2000 ICB, we prepared a table (table 1) that shows the program changes (with the subcategories) and adjustments during fiscal year 1999 for major departments and agencies. In brief, the table shows that federal paperwork burden estimates rose by about 233 million burden hours during fiscal year 1999, and that the Department of the Treasury accounted for about 207 million of that increase. As I mentioned earlier, IRS alone increased its estimate between fiscal years 1998 and 1999 by more than 203 million burden hours. Also notable is that "agency actions," where one would expect to find evidence of agency burden-reduction efforts, resulted in an 18.4 million burden-hour increase governmentwide. Even in the non-Treasury agencies, "agency actions" resulted in a 4.2 million burden-hour increase.

[6]OMB instructed the agencies to consider only those statutes passed since January 1, 1995, as "new."

Table 1: Reported Changes in Federal Agencies' Burden-Hour Estimates During Fiscal Year 1999

Burden hours in millions

		Program changes						
	FY 1998 estimate	New statutes	Reinstated/ Expired	Agency actions	Total	Adjust-ments	Total change	FY 1999 estimate
Governmentwide	6,951.1	163.8	6.8	18.4	189.0	43.7	232.7	7,183.9
Non-Treasury	1,248.9	13.8	6.8	4.2	24.8	1.1	25.9	1,274.8
Departments								
Agriculture	72.0	0.2	(7.2)	(1.3)	(8.3)	4.1	(4.2)	67.8
Commerce	13.5	0.1	(0.1)	0.8	0.8	0.0	0.8	14.3
Defense	119.0	0.0	0.0	(7.0)	(7.0)	(0.3)	(7.3)	111.7
Education	40.9	0.2	0.0	6.3	6.5	(5.3)	1.2	42.1
Energy	4.5	0.0	0.0	0.0	0.0	0.0	0.0	4.5
Health and Human Services	139.3	8.8	4.3	(0.1)	12.9	12.1	25.1	164.4
Housing and Urban Development	18.5	1.0	(0.4)	0.6	1.2	0.1	1.3	19.8
Interior	4.6	0.2	(0.2)	(0.2)	(0.2)	0.0	(0.2)	4.4
Justice	25.8	1.6	8.5	1.3	11.4	(0.6)	10.8	36.6
Labor	199.0	0.0	0.3	0.6	0.9	(3.9)	(3.0)	196.0
State	28.9	0.0	0.0	0.0	0.0	0.0	0.0	29.0
Transportation	136.8	0.7	0.0	(0.3)	0.4	0.9	1.3	140.1
Treasury (including IRS)	5,702.2	150.0	0.0	14.2	164.2	42.6	206.8	5,909.1
Veterans Affairs	2.6	0.0	2.5	0.1	2.6	0.0	2.6	5.3
Agencies								
Environmental Protection Agency	119.2	0.0	0.0	2.0	2.0	(2.3)	(0.3)	118.9
Federal Acquisition Regulation	24.4	0.0	0.0	(0.5)	(0.5)	(0.5)	(1.0)	23.4
Federal Communications Commission	30.3	0.8	0.1	2.3	3.2	(1.0)	2.2	32.5
Federal Deposit Insurance Corporation	7.6	0.0	0.0	0.0	0.0	0.4	0.4	8.0
Federal Emergency Management Agency	4.7	0.0	0.1	0.0	0.2	0.1	0.3	5.0
Federal Energy Regulatory Commission	5.5	0.0	0.0	(1.5)	(1.5)	0.0	(1.5)	4.0
Federal Trade Commission	127.0	0.0	0.0	0.0	0.0	(0.4)	(0.4)	126.6
National Aeronautic and Space Administration	7.7	0.0	0.0	(0.4)	(0.4)	0.0	(0.4)	7.3
National Science Foundation	4.7	0.0	0.0	0.0	0.0	0.0	0.0	4.7
Nuclear Regulatory Commission	9.7	0.0	0.0	0.0	0.0	(0.1)	(0.1)	9.5
Securities and Exchange Commission	75.7	0.0	0.0	2.2	2.2	(1.3)	0.9	76.6
Small Business Administration	3.1	0.0	(1.2)	(0.2)	(1.4)	0.0	(1.4)	1.7
Social Security Administration	22.1	0.3	0.0	(0.3)	0.1	(0.9)	(0.8)	21.2

Notes: The fiscal year 1998 governmentwide burden-hour estimate that appeared in the ICB for fiscal year 1999 was 6,967.2 million burden hours, and included 16 million burden hours for other agencies not individually listed in the table. However, the fiscal year 1998 governmentwide burden-hour estimate in the ICB for fiscal year 2000 does not include this estimate. OIRA estimated that these collections imposed about 16 million burden hours for fiscal year 1999. Therefore, the governmentwide burden-hour estimate for fiscal year 1999 is about 7.2 billion burden hours. Data on the Federal Acquisition Regulation were submitted by the General Services Administration. Addition of individual elements may not equal totals due to rounding.

Source: OMB.

Nearly half of the non-Treasury agencies were able to reduce their burden-hour estimates to some extent during this 1-year period, but the size of the agency increases were, on average, larger than the reductions. Only 2 of the 16 agencies with at least 10 million burden hours in fiscal year 1998 were able to meet the 5-percent burden-reduction goal for fiscal year 1999 envisioned in the PRA—DOD and USDA. DOD's 7.3 million burden-hour reduction in its paperwork estimate was almost entirely due to agency-initiated program changes—specifically, DOD's efforts to reduce and simplify the burden on contractors. In contrast, USDA's burden estimate declined by more than 4 million hours during fiscal year 1999, but the decline was almost entirely attributable to the expiration of USDA's authority to collect more than 7 million burden hours worth of information. However, this program change does not mean that the Department imposed 7 million hours less paperwork burden on the public. As I will discuss in more detail later, USDA was one of 2 departments with more than 100 violations of the PRA during fiscal year 1999. In those cases, the departments' authority to collect the information expired, but the departments continued to collect the information in violation of the PRA.

Other agencies were also able to claim significant burden reductions during fiscal year 1999, but were not able to meet the 5-percent burden-reduction goal envisioned in the PRA for that year. Again, it is important to understand how these reductions occurred. For example, DOL's burden estimate declined by more than 3 million hours, or about 1.5 percent. However, virtually all of the decrease in DOL's estimate was because of adjustments (e.g., reestimates or adjustments reflecting changes in the economy for which DOL should not claim credit).

Other agencies' burden-hour estimates increased during this 1-year period, with some estimates rising substantially. For example, HHS' estimate rose more than 25 million hours during fiscal year 1999, or about 18 percent. The HHS increase was nearly evenly divided between program changes and adjustments. The Department of Justice's estimate rose by nearly 11 million hour between fiscal years 1998 and 1999—an increase of more than 40 percent. There, the increase was entirely due to program changes—primarily reinstated collections.

Although these changes in non-Treasury departments and agencies are interesting, they pale in comparison to the size of the changes at IRS. IRS' burden-hour estimate increased nearly seven times as much as the net increases from all other agencies combined. Therefore, although all agencies must ensure that their information collections impose the least

amount of burden possible, the key to controlling federal paperwork governmentwide lies in controlling the increases at IRS.

IRS Small Business Initiatives

Mr. Chairman, you also asked us to identify any substantive changes in IRS paperwork requirements directed at small businesses during the past year. IRS' ICB submission to OIRA for fiscal year 2000 identified several initiatives that the agency said were designed to increase accessibility for small businesses. For example, IRS said that it

- Was working with the Senate Committee on Small Business to survey small business owners and identify the most complex IRS forms, schedules, instructions, and other publications confronting taxpayers, with a goal of reducing tax filing and recordkeeping requirements encountered by small business.
- Had launched a web page for small business on the IRS internet homepage to, among other things, give tax assistance and expand electronic filing.
- Had established a "Small Business Laboratory Prototype" to increase voluntary compliance, lessen compliance burden, and provide improved customer service to the small business community.
- Was working with the Small Business Administration to develop new tax training for small business owners.

The ICB also identified several planned initiatives for fiscal year 2000 that were designed to address the needs of small business. These initiatives included enhanced outreach to new small businesses and penalty relief to small businesses with Y2K problems in the first quarter of the year 2000. Also, IRS officials told us during the development of this testimony that the agency had several other initiatives designed to reduce the burden associated with IRS paperwork on small businesses. However, neither the ICB nor the IRS officials with whom we spoke indicated how many burden hours these various initiatives would reduce from the agency's paperwork estimate. IRS officials told us that the agency's burden-estimation methodology does not allow them to measure the number of hours reduced as a result of some of the small business initiatives that the agency has made or intends to make.

Agencies Identified Hundreds of PRA Violations During Fiscal Year 1999

I would now like to turn to the last main topic you asked us to address—PRA violations. The PRA prohibits an agency from conducting or sponsoring a collection of information unless (1) the agency has submitted the proposed collection and other documents to OIRA, (2) OIRA has approved the proposed collection, and (3) the agency displays an OMB control number on the collection. OIRA may not approve a collection of

information for more than 3 years, and there are about 7,000 approved collections at any point in time. The PRA also says no one can be penalized for failing to comply with a collection of information subject to the act if the collection does not display a valid OMB control number. The act requires that OIRA's annual report to Congress include a list of all violations of the act, and requires agencies to establish a process to ensure that each information collection is in compliance with these clearance requirements.

In the ICB for fiscal year 1999 that was published last April, OIRA listed a total of 872 violations of the PRA. Of these violations, 795 were instances in which OIRA authorizations had expired and 77 were collections that had not received OIRA approval. In our April 1999 testimony before this Committee, we concluded that OIRA had done little to address agencies' PRA violations and suggested several ways that OIRA could improve its performance.

Shortly after the hearing, in May 1999, the Acting Administrator of OIRA sent a memorandum to agency chief information officers calling their attention to the violations in the ICB and noting that more than 370 of them remained unresolved (i.e., the agencies still had not obtained OIRA authorization or had not indicated that they were no longer collecting the information). He said "[t]his situation is unacceptable; we must fix it immediately and prevent it from happening again." He requested that each agency (1) provide a timetable for resolution of each violation listed in the ICB; (2) provide a timetable for resolution of each expiration of OIRA authorization since the end of fiscal year 1998, indicating for each collection whether or not the agency had discontinued its use; and (3) describe the procedures by which the agency's chief information officer would prevent future violations. The Deputy Director of OMB also notified the President's Management Council of the need to resolve the violations identified in the ICB and encouraged the members of the Council to work with the chief information officers to ensure they have the necessary resources and authority.

Most of the agencies responded to the Acting Administrator's memorandum, and they frequently indicated that they planned to improve their performance.[7] For example, the Chief Information Officer at USDA indicated that 47 of the more than 100 information collections that were

[7]OIRA was not able to provide us with responses from the Departments of Education and Energy, the Federal Energy Regulatory Commission, the National Science Foundation, and the Social Security Administration.

listed in the ICB as violations had been reinstated, and 5 other collections were pending approval by OMB. The Acting Chief Information Officer at DVA said that they would make every effort to prevent violations in the future, and that the agency's first challenge was to "eliminate all expired collections of information by September 30, 1999." (Emphasis in original.)

Some of the agencies also indicated that some of the information collections identified in the ICB for fiscal year 1999 as being in violation of the PRA were not violations. For example, USDA's Chief Information Officer said that five of the collections were intentional expirations. The Assistant Secretary for Management and Budget at HHS indicated that six of the collections were incorrectly listed as violations for a variety of reasons. Therefore, the number of PRA violations during fiscal year 1999 appears to have been somewhat less than the 872 reported in the ICB, although the precise number of violations during that year remains unclear.

In September 1999, the OIRA Administrator sent letters to the agencies notifying them of continuing and possible new violations and encouraging them to bring those violations into compliance. For example, in his letter to the Department of Justice, the Administrator said OIRA's records indicate that "there may be eight uncorrected violations dating back to last fiscal year, as well as at least 43 additional violations through unintentional expirations this year."

In addition to corresponding with the agencies, OIRA has taken other actions designed to reduce the number of violations. For example, for years, OIRA has sent agencies a monthly list of agency information collections whose OMB authorizations will expire within the next few months. OIRA has also added information about expired approvals to OMB's Internet home page. As a result, the Acting OIRA Administrator said last year that potential respondents would be able to inform the collecting agency, OMB, and Congress of the need for the agency to either obtain reinstatement of OMB approval or discontinue the collection.

Agencies Again Reported Hundreds of PRA Violations

The fiscal year 2000 ICB indicates that PRA violations are still a serious problem. Table 2 shows the number of information collections in each agency for which OIRA authorizations had expired (and the agencies appear to have continued to collect the information beyond the expiration dates), collections that did not receive OIRA authorizations, and the total number of PRA violations in each agency. As you can see, the 27 agencies indicated that 710 of their information collections were in violation of the PRA at some point during fiscal year 1999. Of these, 620 were instances in

which OIRA authorizations had expired, and 90 were collections that had not received OIRA approval. USDA and DVA had the most violations—more than 100 in each agency. Four other departments (Health and Human Services, Housing and Urban Development, Interior, and Justice) collectively reported 281 violations.

Table 2Error! Unknown document property name..: Reported Violations of the PRA During Fiscal Year 1999

	Expired information collections	Unapproved information collections	Total
Departments			
Agriculture	98	18	116
Commerce	14	13	27
Defense	31	1	32
Education	7	3	10
Energy	0	0	0
Health and Human Services	49	11	60
Housing and Urban Development	80	0	80
Interior	25	18	43
Justice	98	0	98
Labor	20	3	23
State	26	6	32
Transportation	1	6	7
Treasury	3	0	3
Veterans Affairs	115	0	115
Agencies			
Environmental Protection Agency	1	1	2
Federal Acquisitions Regulation	0	0	0
Federal Communications Commission	5	0	5
Federal Deposit Insurance Corporation	2	0	2
Federal Emergency Management Agency	22	5	27
Federal Energy Regulatory Commission	0	0	0
Federal Trade Commission	0	0	0
National Aeronautics and Space Administration	0	0	0
Nuclear Regulatory Commission	0	0	0
National Science Foundation	0	0	0
Small Business Administration	19	0	19
Securities and Exchange Commission	0	0	0
Social Security Administration	4	5	9
Total	**620**	**90**	**710**

Note: The General Services Administration administers the Federal Acquisitions Regulations.

Source: OMB.

OIRA indicated that many of the 710 violations had been resolved by the end of fiscal year 1999 (i.e., OIRA authorization for the collection had been reinstated or the collection had been discontinued). However, more than 250 violations had not been resolved and, in some cases, had been

occurring for years. For example, OIRA authorization for 28 of USDA's collections had been expired since at least 1997 and no action had been taken to reinstate those authorizations or discontinue the collections by the end of the fiscal year.

As I indicated earlier, it is unclear whether the number of violations is going down, going up, or staying about the same. On the surface, it appears that the number of violations is going down (from 872 to 710). However, some of the expirations that OIRA identified as violations in the fiscal year 1999 ICB were not violations, so the real extent of change is less than it appears. At USDA and DVA, though, it is clear that not much progress has been made. In fiscal year 1998, there were 103 violations at USDA; the recently published ICB lists 116 violations during fiscal year 1999. Last year's ICB indicated that there were 128 violations at DVA during fiscal year 1998; the agency's submission for this year lists 115 violations during fiscal year 1999. Even if the number of PRA violations governmentwide is going down, we believe that 710 violations of the act in 1 year is still far too many.

In last year's testimony, we provided an estimate of the monetary cost associated with 28 PRA violations that had been the subject of correspondence between OIRA and the Subcommittee. To estimate that cost, we multiplied the number of burden hours associated with the violations by an OMB estimate of the "opportunity cost" associated with each hour of IRS paperwork. As a result, we estimated that the 28 violations imposed nearly $3 billion in unauthorized burden on the public. However, we were unable to estimate the opportunity costs of all PRA violations because the ICB did not provide information on the number of burden hours associated with each of the violations.

The fiscal year 2000 ICB also does not identify the number of burden hours for each violation, so we again cannot provide an estimate of the opportunity costs that all of these violations represent. Nevertheless, we continue to believe that these violations represent potentially significant opportunity costs to the public. Several of the USDA-expired collections that we highlighted last year continued to be violations during fiscal year 1999, and each collection imposed substantial costs on the public. For example:

- USDA's authorization to collect the report of acreage information collection expired on June 30, 1997, with an annual estimated burden of 2.8 million burden hours. In November 1997, OIRA disapproved reinstatement of this collection as "lacking need and practical utility." Nevertheless,

USDA continues to collect the information. As of September 30, 1999, the collection had imposed 6.4 million burden hours of paperwork without OIRA approval (2.25 years times 2.85 million burden hours per year). At a wage rate of $26.50 per burden hour, the opportunity cost for this violation was nearly $170 million.[8]

- USDA's authorization to collect the noninsured crop disaster assistance information collection expired on May 31, 1998, with an annual estimated burden of 10.1 million burden hours. As of September 30, 1999, the collection had imposed 13.5 million burden hours of paperwork without OIRA approval. Therefore, the opportunity cost associated with this violation was about $357 million.

Not all of the expired collections were this large. Furthermore, reauthorization of these collections will not save the public the estimated opportunity costs. Nevertheless, another way to view paperwork burden is in monetary terms, and these figures illustrate the significance of the violations that continue to occur.

OIRA and Agencies Can Do More to Ensure Compliance With the PRA

As I indicated earlier, OIRA has undertaken several efforts since last year's hearing to encourage agencies to comply with the PRA. However, with 710 violations of the PRA during fiscal year 1999, it is reasonable to question the effectiveness of those efforts, and even whether OIRA alone can deal with this situation.

For example, although adding information about expired approvals to OMB's Internet home page is a step in the right direction, this approach places the burden of responsibility to detect unauthorized collections on the public. As we emphasized during last year's hearing, it is OIRA, not the public, that has the statutory responsibility to review and approve agencies' collections of information and identify all PRA violations.

Of the two types of PRA violations (collections without OMB authority and collections whose authority has expired), collections whose OMB authority has expired are the most numerous and the easiest to identify. However, OIRA's current procedures do not appear capable of detecting even these violations in a timely manner. For example, although OIRA has sent agencies a monthly list of information collections whose OMB approvals are about to expire, the agencies are not required to respond to

[8]As we noted last year, OMB has estimated the opportunity cost associated with filling out tax forms at $26.50 per hour. Although OMB noted that the hourly cost of a technical employee (including overhead and fringe benefits) may exceed $40 per hour, we used $26.50 as the applicable wage rate in our calculations.

these notifications. Therefore, OIRA does not know which information collections are being administered in violation of the PRA until it collects the information as part of the annual ICB process—after the violations have occurred.

Even when OIRA becomes aware of PRA violations, OIRA officials told us they have no authority to require agencies to come into compliance. Ultimately, they said, it is up to the agencies to comply with the law. We do not believe that OIRA is as powerless as this explanation would suggest. In our previous testimony we identified several actions that OIRA could take to encourage agencies to come into compliance, including the following:

- Publicly announce that the agency is out of compliance with the PRA in meetings of the Chief Information Officer's Council and the President's Management Council.
- Notify the "budget" side of OMB that the agency is collecting information in violation of the PRA and encourage the appropriate resource management office to use its influence to bring the agency into compliance.
- Notify the Vice President of the agency's violation. (The Vice President is charged under Executive Order 12866 with coordinating the development and presentation of recommendations concerning regulatory policy, planning, and review.)
- Place a notice in the Federal Register notifying the affected public that they need not provide the agency with the information requested in the expired information collection.

OIRA officials told us that the issue of PRA violations had been raised during at least one meeting of the Chief Information Officer's Council and the President's Management Council. They also said that the resource management offices receive copies of the ICBs listing the violations. Although they said that OIRA desk officers sometimes communicate with staff in OMB resource management offices about PRA violations, they also said that they do not do so routinely. Neither has OIRA notified the Vice President about the violations or placed the suggested notices in the Federal Register.

In our testimony last year we also said that OIRA could notify agencies that the PRA requires them to establish a process to ensure that each information collection is in compliance with the act's clearance requirements. Agencies that continue to collect information without OMB approval or after OMB approval has expired are clearly not complying with

this requirement. Some agencies do not appear to have established sound clearance processes. Just 6 of the 27 PRA agencies in table 2 (USDA, DVA, and the Departments of Health and Human Services, Housing and Urban Development, Interior, and Justice) accounted for more than 70 percent of all violations.

At least some of the problem may be certain agencies' minimal human capital investment in paperwork clearance. According to OIRA officials, USDA has only one staff member responsible for reviewing the entire Department's paperwork requirements—a condition that they said contributes to the agency's poor PRA performance. Likewise, DVA indicated in its response to OIRA's May 1999 memorandum that it had "one full-time equivalent (FTE) person to support the PRA."

Although OIRA's current workload is clearly substantial, we do not believe the kinds of actions that we suggested would require significant additional resources. Primarily, the actions require a commitment by OIRA leadership to improve the operation of the current paperwork clearance process. However, we also recognize that OIRA cannot eliminate PRA violations by itself. Federal agencies committing these violations need to evidence a similar level of resolve.

Mr. Chairman, this completes my prepared statement. I would be pleased to answer any questions.

Mr. MCINTOSH. Great. Thank you. Your review of that is startling in many ways.

Let me turn to our next witness, Ms. Cindy Noe, from Fishers, IN. Cindy, welcome to Washington and the subcommittee. Please feel free to summarize your testimony and we'll put the entire written prepared remarks into the record.

STATEMENT OF CINDY NOE, OWNER, IHM FACILITY SERVICES, FISHERS, IN

Ms. NOE. Thank you, Chairman McIntosh, and committee members. I appreciate your continued interest in the impact of paperwork and regulation upon small businesses. I am Cindy Noe, cofounder and operator of IHM Facility Services and Integrated Housekeeping Services, located in Fishers, IN. We provide facility services for industry and food processing plants in about a seven-State region. And I serve on the Indiana Leadership Council of the National Federation of Independent Business.

For me, dealing with the overwhelming requirements of my government, i.e., the IRS and other regulatory agencies, and the accompanying paperwork that comes with that, represent the greatest moral dilemma I face as a business owner today. You see, I desire to be an upright, moral person in everything that I do and say. Our company's tag line is "Doing the Right Thing." We reinforce that throughout our company, with our customers as well as with each other.

So what is the moral dilemma that I speak of? Well, there are basically three parts. One is the complexity of compliance, the second is the cost of compliance, and the third is knowing that we still are not in compliance even though we have tried our very best to comply.

The complexity of compliance. Seemingly simple business related actions get snarled in pages of paperwork and instructions. Moving an employee and their family to a new State requires digesting 16 pages of directions, calling our CPA because there's probably a needed point of clarification, as well as making sure that we have then completed and distributed the appropriate IRS forms to distribute. And this is not simply for moving expenses. Similar gyrations are need for business expenses, travel, entertainment, and gifts. Stockholder distributions have 11 pages of totally undigestible instructions and then we have the cost studies and various surveys that we are requested to do on an irregular basis.

And that's just the IRS. Add to that OSHA, DOT, DOL, EPA, EEOC, FDA, HHS, and we are absolutely drowning in regulations and instructions that we must digest and be able to execute. Then you have the training on how to properly document for all of this. And above that you have to make sure that certain language appears in just the right way in company manuals, etc. It is totally overwhelming for me as a small business owner.

Second, you have the cost of compliance. And here's an example. Our industry has inherently high turnover. We now must send new hire employee information to the Department of Health and Human Services to find deadbeat dads. We have chosen to comply by paying our payroll company $2 per employee to submit that information. Our cost does not stop there, however. We're finding

that when the Government catches up with the employee, sometimes they just quit and move on to the next job. We are left to absorb the additional hiring and training expenses to cover that increased turnover.

You just sit there and scratch your head and say, oh, the games we play. But in preparing for this testimony, I was shocked to find that over one-third of our administrative salaries are spent toward achieving compliance of the Government regulations that apply to our business. And that does not include items like the $23,000 we have budgeted for the professional services of our CPA or the indirect expenses of increased turnover that I mentioned before.

The third is knowing that we are still not in compliance, and here is the crux of the moral dilemma. I love America. I consider it as an absolute privilege to have been born in this country. And Jesus, referring to the government of his day, instructs us to "render to Caesar what is Caesar's." The problem is, I know I do not. I know I cannot "render unto Caesar what is Caesar's" because Caesar has become so complex that Caesar, himself, would disagree internally on how much I owe and when I am in compliance.

To achieve the unachievable goal, that is the position in which small business owners find themselves. You always feel like you are one step away from a penalty, a claim, or a lawsuit, that could severely disrupt or even close down your business, no matter how much you've tried to do the right thing. It puts IHM and every other company at the mercy of a growing and ever more intrusive and power hungry government.

Would I choose to start over as a small business owner in today's overly regulated and complex business environment? Frankly I don't know. Maybe not. I do know that 2 years ago my daughter was real excited about starting her own business. She abandoned it after about 9 months because of all the required government paperwork, it just squelched the excitement and satisfaction that came from meeting her customers' needs. And that is profoundly sad. But resolve the issue that we are addressing here today, and both she and I would very much enjoy operating our small businesses.

So what should be done? Well, while there are many short term Band-Aid measures that you should continue under the Small Business Paperwork Reduction Act Amendments of 1999, I would encourage you to take a step toward long term resolution. Vote for the passage of H.R. 1041 to terminate the Internal Revenue Code of 1986 and replace it with something that is simple and just as is outlined in the bill.

Thank you very much.

[The prepared statement of Ms. Noe follows:]

COMMITTEE ON GOVERNMENT REFORM

Testimony before

Subcommittee on National Economic Growth,

Natural Resources, and Regulatory Affairs

By

Cindy Noe

IHM Facility Services

Fishers, Indiana

April 12, 2000

Thank you Chairman McIntosh, Committee members, and Commissioner Rossotti for your continued interest in the impact of paperwork and regulation on small businesses.

I am Cindy Noe, co-founder and owner/operator of IHM Facility Services and Integrated Housekeeping Services, both located in Fishers, Indiana. We provide facility services for industrial and food processing customers in a seven state region. We celebrate our twenty-fifth year in business this August. I have the pleasure of serving on the Indiana Leadership Council of the National Federation of Independent Business.

For me, dealing with the overwhelming requirements of my government, i.e. the IRS and regulatory agencies, and the accompanying paperwork, represent the greatest moral dilemma I face in business today. You see, I desire to be a moral and upright person in everything I do and say. Our company's tagline is *"Doing the Right Thing"*. We reinforce that throughout our company, both in our dealings with our customers and each other.

So what is the moral dilemma I speak of? There are really 3 parts: (1) the complexity of compliance, (2) the cost of compliance, and having done all that, (3) knowing we still are not in compliance even though we have done our very best to comply.

The complexity of compliance- Seemingly simple business related actions get snarled in pages of instructions and paperwork. Moving an employee and their family to a new city requires digesting 16 pages of instructions, probably calling our CPA for clarification, and issuing of the appropriate IRS forms. Similar gyrations are needed for car, travel, business expenses, issuing a K-1, employee benefits, and the list goes on. And, that's just the IRS. Add to that regulations from OSHA, DOT, DOL, EEOC, EPA, FDA, HHS, and we are awash in regulations, forms, training in how to document, certain

language that must appear in just the right way in company manuals, etc. It is overwhelming for me as a small business owner.

The cost of compliance- We operate in a very competitive marketplace. I know compliance takes both direct and indirect dollars. For example, our industry has inherently high turnover. We now must send new hire employee information to the Department of Health and Human Services to find dead beat dads. We chose to comply by paying our payroll company $2.00 per employee to submit the information. Our costs do not stop there, however. We're finding when the government catches up with the employee, sometimes they simply quit, move on to the next job, and our hiring and training expenses go up to cover the increased turnover. Oh the games we play! But in preparing for this statement, I was shocked to find over a third of our administrative salaries are spent towards achieving compliance of the government regulations that apply to our business. And, that doesn't include items like the $23,000 budgeted for the professional services of our CPA, or the increased expense of turnover mentioned above.

Knowing we still are not in compliance- Here is the crux of the moral dilemma. I love America and consider it a privilege to have been born here. And Jesus, referring to the government of His day, instructs us to "render to Caesar what is Caesar's." The problem is, I know I do not. I know I cannot "render to Caesar what is Caesar's" because Caesar has become so complex that even Caesar, himself, will disagree internally on how much I owe and when I am in compliance. To achieve the unachievable goal, that is the position in which small business owners find themselves. You always feel like you're one step away from a penalty, a claim, or a suit that could severely disrupt or close down the business, no matter how much you've tried to "Do the right thing." It puts IHM, and every other company, at the mercy of an ever more intrusive and power hungry government.

Would I choose to start over as a small business owner in today's overly regulated and complex business environment? Maybe not. Two years ago my daughter was real excited about starting her own business. She abandoned it about 9 months later because all the required government paperwork squelched the excitement and satisfaction of meeting customer's needs. And, that is sad. But, resolve the issue we're addressing here today, and both she and I would very much enjoy operating our own small businesses.

Thank you for the opportunity to tell you my story in the hope it will provide insight into the dilemma of a business owner. And, while there are many short-term, Band-Aid measures you should continue to take under the Small Business Paperwork Reduction Act Amendments of 1999, I'd encourage you to take a step towards long-term resolution. Vote for the passage of H.R. 1041, to terminate the Internal Revenue Code of 1986, and replace it with something that is simple and just as outlined in the bill.

I am happy to answer any questions.

Mr. MCINTOSH. Thank you Cindy. Thank you very much for that testimony.

Let me now turn to our next witness, Mr. Nick Runnebohm. Nick is a good friend from Shelbyville. Welcome here to the committee. And feel free to summarize your testimony and we'll put the entire remarks into the record.

STATEMENT OF NICK RUNNEBOHM, OWNER, RUNNEBOHM CONSTRUCTION CO., INC., SHELBYVILLE, IN

Mr. RUNNEBOHM. Mr. Chairman and members of the House Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, thank you for asking me to testify before you today. I am here to ask you to reduce the paperwork burden and especially that IRS tax form burden on small businesses like mine.

I founded Runnebohm Construction in Shelbyville in Indiana 1968. Since that time, the Tax Code has become so complicated that it's almost impossible for a small business person to prepare their own taxes. This year it cost me $9,575 in accountant's time to prepare my company's 1999 taxes. And this doesn't include the substantial time spent by myself and my bookkeeper throughout the year for dealing with issues.

Simplifying the IRS forms would allow more time for my company to concentrate on the construction business. Like Cindy says, I love construction, what I don't love is all the Government paperwork that I have to deal with today and the feeling that you're never in compliance.

There are four particular tax burdens on small businesses that I wish to speak about today. The first three involve substantial paperwork and recordkeeping. First, the look-back calculation for percentage of completion method of reporting income is very burdensome. These calculations cost between $600 and $1,000 in accountant fees to prepare plus several hours of the bookkeeper's time. Moreover, forcing us to use this method means that we must project profits on projects that may be only 10 to 20 percent complete and which entail a high degree of risk because of weather issues, labor issues and many other unknowns. In other words, we have to pay taxes on income that we might never receive.

Second, the alternative minimum tax, AMT, requires taxpayers to calculate their tax using two methods. Certain preference items must be calculated and subsequently added back to determine AMT income. Examples include the difference between regular and accelerated depreciation and the differences between completed contracts versus percent complete accounting for long term contracts. Once these AMT preference items are calculated AMT and related taxes are determined and the taxpayer is required to pay the higher of the regular or the AMT tax. The cost of both of these calculations can be $1,000 to $3,000 per year for a small contractor like me. The AMT should be eliminated or simplified to reduce the cost and the time of figuring the tax due.

Third, section 125 of the Tax Code is unfair to minority owners of sub S corporations and partnerships which include a large number of small businessmen. Anyone who is more than a 2 percent owner of a sub S corporation loses the right to pay for group health insurance with pretax dollars. Every other employee enjoys that

right. In addition, a 2 or more percent owner is not eligible for many other tax free benefits to which other employees are entitled. These provisions are very harmful to small businesses, especially now when small companies are trying to prevent good employees from being raided by large firms. Big business employee stock ownership is not as affected because most of them are C corporations and are not subject to this rule. These provisions should be changed so that they do not adversely effect the value of minority ownership of stock in small business.

Fourth, I would like to thank Chairman McIntosh and the other representatives that voted to repeal the death or estate tax. I am a third generation general contractor and hope to pass the business to my son Mike. Mike is part owner of the company now, and I hope that the death tax will not force him to sell or otherwise cut back on that business. I also pay a hidden tax and I am distracted from my business because I have to pay an accountant to help me with estate tax planning.

My message here today is to ask Chairman McIntosh and other representatives to keep up their effort to reduce paperwork and foster small business growth. I would sincerely vote for the idea of a flat tax with no deductions so we can eliminate all this guesswork and trying to become compliant and pay our tax and go on with our business.

Mr. Chairman and members of the subcommittee, thank you for allowing me to be a witness here today.

[The prepared statement of Mr. Runnebohm follows:]

TESTIMONY OF NICK RUNNEBOHM

OWNER OF RUNNEBOHM CONSTRUCTION CO., INC.

Before the House Government Reform Committee's
Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs
On "Reinventing Paperwork?: The Clinton-Gore Administration's Record on Paperwork Reduction"

April 12, 2000

Mr. Chairman and members of the House Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, thank you for asking me to testify before you today. I commend you for your efforts to reduce the paperwork burden on small businesses and for holding a hearing on this important issue. I am here to ask you to do all you can to reduce the paperwork burden, and especially the IRS tax form burden, on small businesses like mine.

I founded Runnebohm Construction in Shelbyville, Indiana in 1968, which operated out of my home until 1970. Runnebohm Construction has won more than a dozen national design-build awards for excellence in construction. Our management philosophy evolves from the golden rule "Do unto others as you would have them do onto you." We practice this philosophy with our employees and customers, and think this is why we have so much repeat business. Our 60 employees are treated fairly and with respect, and benefit from our profit-sharing plan. Many of our key personnel have been with us over 20 years.

The tax code is so complicated that it is almost impossible for a small businessperson to prepare his own taxes. It cost me $9,575 to prepare my company's 1999 taxes. And this does **not** include substantial ongoing costs throughout the year for outside tax advice, bookkeeping, and my own and other executive's work on taxes. For example, our bookkeeper spends at least 200 hours every year on tax issues and reporting Federal taxes. I also spend about 70 or 80 hours every year on tax and reporting issues. Simplifying IRS forms would allow more time for my company to concentrate on the construction business.

I have undergone two Federal tax audits and one 401(k) audit in the last 8 years. The last tax audit cost $9,483 in accounting fees, as well as 85 hours of our bookkeeper's time and 30 hours of my time. The 401(k) audit cost 20 hours of our bookkeeper's time.

There are four particular tax burdens on small business that I wish to talk about. The first three involve substantial paperwork and recordkeeping. First, the "look-back" calculation for "percentage of completion" method of reporting income is very burdensome. These calculations cost between $600 to $1,000 for the accountant, plus several hours of the bookkeeper's time to prepare. Moreover, forcing us to use this method means that we must project profits on projects that may be only 10 to 20 percent complete and which entail a high degree of risk. In other words, we have to pay taxes on income that we may never receive.

Second, the "alternative minimum tax" (AMT) requires taxpayers to calculate their tax using two methods. Certain preference items must be calculated and subsequently added back to determine AMT income. Examples include the difference between regular and accelerated depreciation and the differences between "completed contracts" versus "percent complete" accounting for long-term contracts. Once these AMT preference items are calculated, AMT and related taxes are determined and the taxpayer is required to pay the higher of the regular and the AMT tax. The cost of both of these calculations can be about $1,000 to $3,000 per year for a small contractor like me. The AMT should be eliminated or simplified to reduce this cost and the burden of figuring the tax due.

Third, section 125 of the tax code is unfair to minority owners of subchapter S corporations and partnerships, which includes a large number of small businesses. Anyone who is more than a 2-percent owner of a small business loses the right to pay for group health insurance with "pre-tax" dollars. Every other employee enjoys that right. In addition, a 2 or more percent owner is not eligible for other tax-free benefits, such as uniforms, etc. to which other employees are entitled. These provisions are very harmful to small businesses, especially now when small companies are trying to prevent good employees from being "raided" by large firms. Big business employee stock ownership is not as effected because most of them are "C" corporations and not subject to this rule. These provisions should be changed so that they do not adversely effect the value of minority ownership of stock in the small business.

Fourth, I want to thank Chairman McIntosh and the other Representatives that voted to repeal the death or estate tax. I am a third-generation general contractor and hope to pass management of the business to my son, Mike. Mike is a part owner of the company now, and I hope that the death tax will not force him to sell or otherwise cut back on the business. I also pay a hidden tax and am distracted from my business because I have to pay an accountant to help with estate tax planning.

I also want to say something about other Federal paperwork we face besides IRS paperwork. The OSHA recordkeeping requirements are especially onerous. We spend approximately 260 hours every year maintaining our required "Material Safety Data Sheet" (MSDS) book. OSHA considers such things as sawdust, drywall, sand, gravel, and concrete as hazardous. OSHA regulations force us to keep exposure records and data on these common substances for as long as an employee works with us plus an additional 30 years. We are a small company with only 2,500 square feet of office space. If we

tried to keep records on exposure for all the things which OSHA considers hazardous, according to their MSDS regulation, we would fill our entire office in six months.

In addition to OSHA, our people spend a significant amount of time each month on FMLA, COBRA and other Federal recordkeeping and reporting requirements.

My message is to ask Chairman McIntosh and other Representatives to keep up your efforts to reduce paperwork and foster small business growth. Mr. Chairman and members of the Subcommittee, thank you for allowing me to be a witness before you today.

Mr. MCINTOSH. Thank you very much, Nick. Thank you for that testimony.

Our final witness on the panel will be Mr. Morton Rosenberg, who is a specialist in American law at the Congressional Research Service. Welcome, Mr. Rosenberg. Please summarize your testimony and any materials you want in the record will be included.

STATEMENT OF MORTON ROSENBERG, SPECIALIST IN AMERICAN LAW, CONGRESSIONAL RESEARCH SERVICE

Mr. ROSENBERG. Thank you, Mr. Chairman. Good morning Mr. Chairman, Mr. Kucinich. You have invited me here today to explore the range of options your subcommittee may have in the face of perceived non-responsiveness by the Office of Management and Budget to requests for information and documents with respect to matters within your subcommittee's jurisdiction.

One instance involves the failure to conduct a complete and adequate search for documents encompassed by a subpoena. A second involves a refusal to provide information about actual substantive changes made by OMB during its review of information collection requests submitted by agencies pursuant to the Paperwork Reduction Act. The third concerns an incomplete response to an explicit statutory direction to OMB to issue guidance to executive agencies as to how to respond to and comply with the requirements of the Congressional Review Act.

Numerous Supreme Court precedents establish and support a very broad and encompassing power in the Congress to engage in oversight and investigations that reaches all sources of information that enable it to carry out its legislative function. In the absence of a countervailing constitutional privilege or a self-imposed statutory restriction upon its authority, Congress and its committees have virtually plenary power to compel information needed to discharge their legislative function from executive agencies, private persons and organizations, and within certain restraints the information so obtained may be made public. In the words of the Supreme Court, the scope of Congress' power to inquire is as penetrating and as far reaching as the potential power to enact and appropriate under the Constitution.

Congress has a very formidable array of tools to carry out its oversight and investigative functions, to gather information. Committees and subcommittees can issue subpoenas to compel testimony or the production of documents. Indeed, it's not well known but even a letter request from you, Mr. Chairman, in the course of an official investigation raises a legal obligation to respond to your requests. If a committee follows its rules for the issuance of a subpoena, it is extraordinarily difficult to successfully challenge it for legal sufficiency. The Supreme Court has ruled that the courts may not enjoin the issuance of a congressional subpoena, holding that the speech or debate clause of the Constitution provides an absolute bar to judicial interference with such compulsory process. As a consequence a witness's sole remedy generally is to refuse to comply, risk being cited for contempt, and then to raise objections as a defense to a criminal contempt action. Perhaps one of the reasons that we haven't had a criminal contempt prosecution

since 1986 is that there has been acquiescence once a contempt citation has been voted by the full committee or the full House.

But while a threat or the actual issuance of a subpoena is normally sufficient to achieve compliance it's basically through the contempt power that Congress may act with ultimate force in response to recalcitrance.

There are three different kinds of contempt—three types of enforcement proceedings that are available. The one most commonly used for the last 60 years is the criminal contempt provision of sections 192 and 194 of Title 2. That mechanism provides that a vote of contempt on the floor of the House may be submitted to the U.S. attorney for prosecution which may lead to imprisonment for up to a year or a fine of $100,000 upon conviction.

It is applicable to both private citizens and executive branch officials. It's a punitive process. That is, the contempt cannot be purged even if the information is turned over at some point.

An enforcement difficulty, however, arises when a referral is made to a U.S. attorney for the District of Columbia, as is the usual case as is required by the contempt statute. The Justice Department has taken the position that Congress can neither constitutionally compel the U.S. attorney to bring the matter before a grand jury nor require him to sign an indictment should the jury hand up one.

This is an unsettled matter judicially and the only experience we have with an executive official occurred in the 1983 contempt proceedings regarding Environmental Protection Agency Administrator Anne Burford.

But that does not mean that Congress is powerless in subpoena disputes with the executive branch. Congress still retains a host of other tools to require information and testimony it needs, not the least of which is public opinion. Thus, even if a citation of contempt does not lead to a criminal prosecution, experience has shown that few administrations and fewer officials within an administration welcome a contempt citation with its resultant publicity and public criticism.

Historically, there have been 10 contempt citations, issued all since 1975, and in 9 of those 10 cases at the point of the contempt citation an accommodation was reached and in most instances documents that were sought were turned over or made available to the committee.

There are, however, several other alternatives to these modes of contempt in the case of an uncooperative executive official. The most promising and possibly the most expeditious route for a House committee would be to seek a resolution of the body authorizing it to bring a civil suit seeking enforcement of the subpoenas. There is precedent for bringing such civil suits under the grant of Federal jurisdiction in 28 U.S.C. 1331 and the Department of Justice has in fact indicated that it would approve this course of action to resolve such interbranch disputes.

But instead of prosecution or litigation, Congress has a host of other tools to secure information and testimony it needs. It can delay action on bills favored by the administration or pass legislation that makes mandatory action that is now discretionary and is not being done. The power of the purse can be used discretely to

put pressure on the administration. Holds may be put on the confirmation process with respect to particular groups of individuals, and ultimately Congress can use the power of impeachment against an executive branch official.

A brief examination of the three areas of subcommittee concern with OMB action suggest that they may be more amenable to a variety of different enforcement actions. For example, your dispute with the Office of Management and Budget with respect to the Paperwork Reduction Act appears to essentially involve your interest in knowing whether the Office of Information and Regulatory Affairs is effectively carrying out its statutory mission to reduce the burden imposed by information collection requests by agencies. The statute, the Paperwork Reduction Act, empowers OIRA to review or reject information collections in part or in their entirety. The statute also requires that the information collection burden be reduced by stated percentages, 10 percent each in fiscal years 1996 and 1997, 5 percent each in fiscal years 1998, 1999 and 2000. OMB has conceded that OIRA has failed to meet these statutory objections in each year so far.

Your subcommittee seeks information about the effectiveness of OIRA's administration of the Paperwork Act, including among other things actual substantive changes made by OIRA during its review of action information collections. OMB's response is that, "it is our view that a substantive change is made by OMB only when OMB exercises its authority to disapprove a collection or when an agency withdraws a collection during our review."

OMB does not deny that it may object to certain requirements in an information collection, and that an agency may agree to delete them as a condition of approval for the rest of the information collection, or that OIRA has the authority to do so. Section 3507(e)(1) of the Paperwork Act indicates that the director has the power to instruct an agency to make substantive material changes to a collection of information and those decisions are to be made publicly available and are to include explanations.

A similar power in the Paperwork Act applies to information collections in rules. OMB simply refuses to reveal whether it ever exercises this discrete review authority. This would appear to be an unquestionably valid exercise of the subcommittee's oversight authority. If OIRA is never exercising such review authority, or is doing so in a manner the subcommittee deems perfunctory, it is a matter it may deem of legislative concern requiring remedial action.

Also it is within the prerogatives of the subcommittee to suggest that in the future that OIRA record instances in which it has vetoed or suggested changes in certain requirements. Of course it may not require OIRA to do so, but the agency's refusal to do so would provide further impetus for remedial legislation. However, to hold the Director of OMB in contempt for what may be in fact an obdurate refusal to implement the law the way Congress may have intended——

Mr. MCINTOSH. Mr. Rosenberg, let me ask you to summarize that and put the remaining of your written testimony into the record.

Thank you.

Mr. ROSENBERG. Also, with respect to the Paperwork Act, it's interesting to note that the Executive order on regulatory review, Executive Order 12866, in an analogous situation allows for review of rules and requires public disclosure once a rule is published in the Federal Register, of the draft that it submitted and how OMB changed it.

And with regard to the subpoena, certainly the entire background of your subpoena requests, the delays in responding to it, the failure to make an adequate search can be all part of the background and basis of a valid contempt citation by your committee.

Thank you.

[The prepared statement of Mr. Rosenberg follows:]

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STATEMENT

OF

MORTON ROSENBERG
SPECIALIST IN AMERICAN PUBLIC LAW
CONGRESSIONAL RESEARCH SERVICE

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS, HOUSE COMMITTEE ON GOVERNMENT REFORM

CONCERNING

AUTHORITY OF A CONGRESSIONAL COMMITTEE TO REQUEST INFORMATION AND DOCUMENTS FROM AN AGENCY DURING AN OVERSIGHT PROCEEDING AND OPTIONS AVAILABLE TO COMPEL COMPLIANCE WITH SUCH REQUESTS

PRESENTED ON

APRIL 12, 2000

Mr. Chairman and Members of the Subcommittee

My name is Morton Rosenberg. I am a Specialist in American Public Law in the American Law Division of the Congressional Research Service (CRS). Among my areas of professional concern at CRS are the problems raised by the interface of Congress and the Executive which involve the scope and application of congressional oversight and investigative prerogatives. Over the years I have been involved in a number of investigations, including Iran-Contra, Rocky Flats, Whitewater, Travelgate, Filegate, and the Clinton impeachment inquiry, as well as other significant interbranch oversight disputes. My involvement has been advising Members and staff on such matters as organization of the probes, subpoena issuance and enforcement, the conduct of hearings, and contempt of Congress resolutions, and has required my dealing with a wide variety of legal and practical issues.

You have asked me here today to explain the range of options your Subcommittee may have in the face of a perceived nonresponsiveness by the Office of Management and Budget (OMB) to requests for information and documents with respect to matters within its jurisdictional purview. One instance involves the failure to conduct a complete and adequate search for documents encompassed by a subpoena. A second involves a refusal to provide information about "actual substantive changes" made by OMB during its review of Information Collection Requests (ICR's) submitted by agencies pursuant to the Paperwork Reduction Act (PRA). The third concerns an incomplete response to an explicit statutory direction to OMB to issue guidance to executive agencies as to how to respond to and comply with the requirements of the 1996 Congressional Review Act.

My discussion will proceed as follows. I will briefly describe the goals and purposes of legislative oversight and how our constitutional scheme of separated but shared powers impacts on the accomplishment of those goals and purposes. I will then outline the leading methods and processes by which congressional committees engage in oversight, distinguishing the unique and vital role of investigations from other facets of the oversight process. Next I will review the legal basis for investigative oversight, describe the essential tools available to committees to make it effective, the problems that may arise in enforcing the investigative prerogative, and the courses of action that are available to circumvent such problems. I will conclude with an assessment of the specific oversight concerns raised by the Subcommittee.

I. The Constitutional Setting of Congressional Oversight

Throughout its history, Congress has engaged in oversight of the executive branch—the review, monitoring, and supervision of the implementation of public policy. The first several Congresses inaugurated such important oversight techniques as special investigations, reporting requirements, resolutions of inquiry, and use of the appropriations process to review executive activity. Contemporary developments, moreover, have increased the legislature's capacity and capabilities *to check on and check the Executive*. Public laws and congressional rules have measurably enhanced Congress's implied power under the Constitution to conduct oversight.

Congressional oversight of the Executive is designed to fulfill a number of important purposes and goals: to ensure executive compliance with legislative intent; to improve the efficiency, effectiveness, and economy of governmental operations; to evaluate program performance; to prevent executive encroachment on legislative powers and prerogatives; to investigate alleged instances of poor administration, arbitrary and capricious behavior, abuse,

waste, fraud and dishonesty; assess agency or officials' ability to manage and carry out program objectives; assess the need for new federal legislation; review and determine federal financial priorities; to protect individual rights and liberties; and to inform the public as to the manner in which its government is performing its public duties, among others.[1]

Legislative oversight is most commonly conducted through its budget, authorization, appropriations, confirmation, and investigative processes, and in rare instances, through impeachment. But the adversarial, often confrontational, and sometimes high profile nature of congressional investigations sets it apart from the more routine, accommodative facets of the oversight process experienced in authorization, appropriations or confirmation exercises. While all aspects of legislative oversight share the common goals of informing Congress so as to best accomplish its tasks of developing legislation, monitoring the implementation of public policy, and of disclosing to the public how its government is performing, the inquisitorial process also sustains and vindicates Congress' role in our constitutional scheme of separated powers and checks and balances. The rich history of congressional investigations from the failed St. Clair expedition in 1792 through Teapot Dome, Watergate, Iran-Contra and Whitewater has established, in law and practice, the nature and contours of congressional prerogatives necessary to maintain the integrity of the legislative role in that constitutional scheme.

It is important to understand that the shape and contours of the legislative oversight process are dictated or directly influenced by our constitutional scheme of separated powers and checks and balances. That scheme envisions and establishes a perpetual struggle for policy control between Congress and the Executive. In practice, the powers of both are too incomplete for one to gain total control. Legislative oversight is the mechanism that attempts to assure that Congress' will is carried out and that Executive power does not overwhelm congressional prerogatives. The complete and correct picture, then, I believe is not that of congressional dominance or executive recalcitrance, but a dynamic process of continuous sparring, confrontation, negotiation, and ultimate accommodation. Occasionally we have monumental clashes. It is in those instances that the congressional power has been refined and defined.

II. Investigative Oversight

A. The Legal Basis for Oversight

Numerous Supreme Court precedents establish and support a broad and encompassing power in the Congress to engage in oversight and investigation that reaches all sources of information that enable it to carry out its legislative function. In the absence of a countervailing constitutional privilege or a self-imposed statutory restriction upon its authority, Congress and its committees, have virtually, plenary power to compel information needed to discharge their legislative function from executive agencies, private persons and organizations, and within certain constraints, the information so obtained may be made public.

More particularly, although there is no express provision of the Constitution which specifically authorizes the Congress to conduct investigations and take testimony for the

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[1] For a general overview of the oversight process see Congressional Research Service, Congressional Oversight Manual (June 25, 1999) (CRS Report No. RL 30240).

purposes of performing its legitimate functions, numerous decisions of the Supreme Court have firmly established that the investigatory power of Congress is so essential to the legislative function as to be implicit in the general vesting of legislative power in Congress.[2] Thus, in *Eastland v. United States Servicemen's Fund* the Court explained that "[t]he scope of its power of inquiry ... is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution."[3] In *Watkins v. United States* the Court further described the breadth of the power of inquiry: "The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statues."[4] The Court went on to emphasize that Congress' investigative power is at its peak when the subject is alleged waste, fraud, abuse, or maladministration within a government department. The investigative power, it stated, "comprehends probes into departments of the Federal Government to expose corruption, inefficiency, or waste."[5] "[T]he first Congresses", it continued, held "inquiries dealing with suspected corruption or mismanagement of government officials"[6] and subsequently, in a series of decisions, "[t]he Court recognized the danger to effective and honest conduct of the Government if the legislative power to probe corruption in the Executive Branch were unduly hampered."[7] Accordingly, the Court stated, it recognizes "the power of the Congress to inquire into and publicize corruption, maladministration, or inefficiencies in the agencies of Government."[8]

But while the congressional power of inquiry is broad, it is not unlimited. The Supreme Court has admonished that the power to investigate may be exercised only "in aid of the legislative function"[9] and cannot be used to expose for the sake of exposure alone. The *Watkins* Court underlined these limitations: "There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress ... nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself, it must be related to, and in furtherance of, a legitimate task of the Congress."[10] Moreover, an investigating committee has only the power to inquire into matters within the scope of the authority delegated to it by its parent body.[11] But once having established its jurisdiction and

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[2] *E.g., McGrain v. Daugherty,* 272 U.S. 135 (1927); *Watkins v. United States,* 354 U.S. 178 (1957); *Barenblatt v. United States,* 360 U.S. 109 (1950); *Eastland v. United States Servicemen's Fund,* 421 U.S. 491 (1975); *Nixon v. Administrator of General Services,* 433 U.S. 425 (1977); see also, *United States v. A.T.T.,* 551 F.2d 384 (D.C. Cir. 1976) and 567 F.2d 1212 (D.C. Cir. 1977).

[3] Rastland, 421 U.S. at 504, n. 15 (quoting *Barenblatt, supra,* 360 U.S. at 111).

[4] 354 U.S. at 187.

[5] *Id.*

[6] *Id.* at 182.

[7] *Id.* at 194-95

[8] *Id.* at 200 n. 33.

[9] *Kilbourn v. Thompson,* 103 U.S. 168, 204 (1880).

[10] *Watkins v. United States, supra,* 354 U.S. at 187.

[11] *United States v. Rumely,* 345 U.S. 41, 42, 44 (1953); *Watkins v. United States, supra,* 354 U.S. at 198.

authority, and the pertinence of the matter under inquiry to its area of authority, a committee's investigative purview is substantial and wide-ranging.[12]

The foundation cases establishing Congress' broad power to probe are illustrative and illuminating. They arose out of the Teapot Dome investigations, the 1920's scandal regarding oil company payoffs to officials in the Harding Administration. A major concern of the congressional oversight investigation was the failure of Attorney General Harry M. Daugherty's Justice Department to prosecute the alleged government malefactors. When congressional committees attempting to investigate came up against refusals by subpoenaed witnesses to provide information, the issue went to the Supreme Court and provided it with the opportunity to issue a seminal decision describing the constitutional basis and reach of congressional oversight. In *McGrain v. Daugherty,*[13] the Supreme Court focused specifically on Congress' authority to study "charges of misfeasance and nonfeasance in the Department of Justice." The Court noted with approval that "the subject to be investigated" by the congressional committee "was the administration of the Department of Justice -- whether its functions were being properly discharged or were being neglected or misdirected, and particularly whether the Attorney General and his assistants were performing or neglecting their duties in respect of the institution and prosecution of proceedings to punish crimes...."[14] In its decision, the Court sustained the contempt arrest of the Attorney General's brother for withholding information from Congress, since Congress "would be materially aided by the information which the investigation was calculated to elicit."[15] Thus, the Supreme Court unequivocally precluded any blanket claim by the Executive that oversight could be barred regarding "whether the Attorney General and his assistants were performing or neglecting their duties in respect of the institution and prosecution of proceedings."[16]

In another Teapot Dome case that reached the Supreme Court, *Sinclair v. United States,*[17] a different witness at the congressional hearings refused to provide answers, and was prosecuted for contempt of Congress. The witness had noted that a lawsuit had been commenced between the government and the Mammoth Oil Company, and declared, "I shall reserve any evidence I may be able to give for those courts... and shall respectfully decline to answer any questions propounded by your committee."[18] The Supreme Court upheld the conviction of the witness, who had appeared voluntarily, for contempt of Congress. The Court considered and rejected in unequivocal terms the witness's contention that the pendency of lawsuits gave an excuse for withholding information. Neither the laws directing that such lawsuits be instituted, nor the lawsuits themselves, "operated to divest the Senate, or the committee, of power further to investigate the actual administration of the land laws."[19]

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[12] *Wilkinson v. United States,* 365 U.S. 408-09 (1961).

[13] 273 U.S. 135, 151 (1927).

[14] *Id.* at 177.

[15] *Id.*

[16] *Id.*

[17] 279 U.S. 263 (1929).

[18] *Id.*, at 290.

[19] *Id.* at 295.

The Court further explained: "It may be conceded that Congress is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits."[20] In other words, those persons having evidence in their possession, including officers and employees of executive agencies, can not lawfully assert that because lawsuits are pending involving the government, "the authority of [the Congress], directly or through its committees, to require pertinent disclosures" is somehow "abridged."

The Supreme Court in the Teapot Dome cases therefore enunciated in the clearest manner the independence of Congress' power to probe. The coincidental focus on the Justice Department and the ability of committees to look deeply into all aspects of its sensitive law enforcement function underlines the potential breadth of that power with respect to other Executive Branch agencies and private sector entities as well.

B. The Essential Tools of Oversight

1. The Subpoena Power

The power of inquiry, with the accompanying process to enforce it, has been deemed "an essential and appropriate auxiliary to the legislative function."[21] A properly authorized subpoena issued by a committee or subcommittee has the same force or effect as a subpoena issued by the parent House itself.[22] To validly issue a subpoena, individual committees or subcommittees must be delegated this authority. Both Senate[23] and House[24] rules presently empower all standing committees and subcommittees to require the attendance and testimony of witnesses and the production of documents. Special or select committees must be specifically delegated that authority by Senate or House resolution.[25] The rules or practices of standing committees may restrict the issuance of subpoenas only to full committees or in certain instances allow issuance by a committee chairman alone, with or without the concurrence of the ranking minority member.

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[20] *Id.* at 295.

[21] *McGrain v. Daugherty, supra,* 273 U.S. at 174-75.

[22] *Id.* at 158.

[23] Senate Rule XXVI(1)(All Senate rules hereinafter cited were in effect as of 1999 unless otherwise indicated and may be found in Sen. Doc. No. 106-6 compiled by the Senate Committee on Rules and Administration).

[24] House Rule XI(2)(m)(1)(All House rules hereinafter cited were in effect as of 1999 unless otherwise indicated and may be found in Rules Adopted By The Committee of the House of Representatives, compiled by the House Rules Committee as a committee print).

[25] See, *e.g.,* S.Res. 23, 100th Cong. (Iran-Contra); Sen. Res. 495, 96th Cong. (Billy Carter/Libya).

Committees may issue subpoenas in furtherance of an investigation within their subject matter jurisdiction as defined by Senate[26] and House[27] rules which confer both legislative and oversight jurisdiction. Subpoenas may be issued on the basis of either source of authority.

A witness seeking to challenge the legal sufficiency of a subpoena, *i.e.*, the committee's authority, alleged constitutional rights violations, subpoena breadth, has only limited remedies available to raise such objections. The Supreme Court has ruled that courts may not enjoin the issuance of a congressional subpoena, holding that the Speech or Debate Clause of the Constitution[28] provides "an absolute bar to judicial interference" with such compulsory process.[29] As a consequence, a witness' sole remedy generally is to refuse to comply, risk being cited for contempt, and then raise objections as a defense in a contempt prosecution.

Challenges to the legal sufficiency of subpoenas must overcome formidable judicial obstacles. The standard to be applied in determining whether the congressional investigating power has been properly asserted was articulated in *Wilkinson* v. *United States*: (1) the committee's investigation of the broad subject matter area must be authorized by Congress; (2) the investigation must be pursuant to "a valid legislative purpose"; and (3) the specific inquiries must be pertinent to the broad subject matter areas which have been authorized by the Congress.[30]

With respect to authorization, a committee's authority derives from the enabling rule or resolution of its parent body. In construing the scope of such authorizations, the Supreme Court has adopted a mode of analysis not unlike that ordinarily followed in determining the meaning of a statute: it looks first to the words of the authorizing rule or resolution itself, and then, if necessary, to the usual sources of legislative history, including floor statements, reports and past committee practice.[31]

As to the requirement of "valid legislative purpose," the Supreme Court has made it clear that Congress does not have to state explicitly what it intends to do as a result of an investigation.[32] When the purpose asserted is supported by reference to specific problems which in the past have been, or in the future may be, the subject of appropriate legislation, it has been held that a court cannot say that a committee of Congress exceeds its power when it seeks information in such areas.[33]

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[26] Senate Rule XXV.

[27] House Rule X.

[28] U.S. Const. Art. I, sec. 6, cl. 1.

[29] *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 503-07 (1975).

[30] 365 U.S. 399, 408-09 (1961).

[31] *Barenblatt v. United States*, 360 U.S. 109, 117 1959); *Watkins v. United States, supra*, 354 U.S. at 209-215.

[32] *In re Chapman*, 166 U.S. 661, 669 (1897).

[33] *Shelton v. United States*, 404 F.2d 1292, 1297 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1024 (1969).

Also, in determining the pertinency of questions to the subject matter under investigation, the courts have required only that the specific inquiries be reasonably related to the subject matter under investigation.[34] An argument that pertinence must be shown "with the degree of explicitness and clarity required by the Due Process Clause" has been held to confuse the standard applicable in those rare cases when the constitutional rights of individuals are implicated by congressional investigations with the far more common situation of the exercise of legislative oversight over the administration of the law which does not involve an individual constitutional right or prerogative. It is, of course, well established that the courts will intervene to protect constitutional rights from infringement by Congress, including its committees and members.[35] But "[w]here constitutional rights are not violated, there is no warrant to interfere with the internal procedures of Congress."[36]

Finally, it is useful to note that the obligation to comply with a legitimate committee request for information and documents is not dependent on the issuance of compulsory process. As indicated previously, the witness found in contempt in the *Sinclair* case for refusing to respond to questions posed by the Committee appeared *voluntarily*. Further, the courts have held that the legal obligation to surrender documents requested by the chairman of a congressional committee arises at the time of the official request[37], and have agreed in construing 18 U.S.C. 1505, a statute proscribing the obstruction of congressional proceedings, that the statute is broad enough to cover obstructive acts in anticipation of a subpoena.[38] Thus a refusal to comply with a letter request could engender a contempt citation in the proper circumstances.

2. Congressional Grants of Immunity

The Fifth Amendment to the Constitution provides in part that "no person . . . shall be compelled in any criminal case to be a witness against himself ... " The privilege against self-incrimination is available to a witness in a congressional investigation.[39] When a witness before a committee asserts his constitutional privilege, the committee may obtain a court order which compels him to testify and grants him immunity against the use of his

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[34] *Sinclair v. United States, supra,* 279 U.S. at 299; *Ashland Oil, Inc. v. F.T.C.,* 409 F.Supp. at 305.

[35] *See, e.g., Yellin v. United States,* 374 U.S. 109, 143, 144 (1969); *Watkins v. United States, supra; United States v. Ballin,* 144 U.S. 1, 5 (1892).

[36] *Exxon Corporation v. F.T.C.,* 589 F.2d 582, 590 (D.C. Cir. 1978).

[37] See, *e.g., Ashland Oil Co. v. FTC,* 598 F.2d 977, 980-81 (D.C. Cir. 1976).

[38] See, *e.g., United States v. Mitchell,* 877 F.2d 297, 300-01 (9th Cir. 1979)("To give section 1505 the protective force it was intended, corrupt endeavors to influence congressional investigations must be proscribed even when they occur prior to formal committee authorization."); *United States* v. *Tallent,* 407 F.Supp 878, 888 (.N.D.Ga. 1975); *United States v. North,* 708 F.Supp. 372 (D.D.C. 1988); *United States v. North,* 708 F.Supp. 389 (D.D.C. 1988)(holding that the defendants' acts constituted the felony offenses of obstruction of Congress and of making false statements, even though the inquiry letters and responses occurred in the absence of committee votes and subpoenas or oaths).

[39] See *Watkins v. United States,* 354 U.S. 178 (1957); *Quinn v. United States,* 349 U.S. 155 (1955).

testimony and information derived from that testimony in a subsequent criminal prosecution. He may still be prosecuted on the basis of other evidence.

The privilege against self-incrimination is an exception to the public's right to every person's evidence. However, a witness' Fifth Amendment privilege can be restricted if the government chooses to grant him immunity. Immunity is considered to provide the witness with the constitutional equivalent of his Fifth Amendment privilege.[40] Immunity grants may be required in the course of an investigation because "many offenses are of such a character that the only persons capable of giving useful testimony are those implicated in the crime."[41] Such grants may be appropriate when a committee is convinced that the testimony elicited will produce new or vital facts that would otherwise be unavailable or to allow a witness to implicate persons of greater rank or authority. Grants of immunity have figured prominently in a number of major congressional investigations, including Watergate (John Dean and Jeb Magruder) and Iran-Contra (Oliver North and John Poindexter).

The scope of the immunity which is granted, and the procedure to be employed, are outlined in 18 U.S.C. §§ 6002, 6005. If a witness before the House or Senate or a committee or subcommittee of either body asserts his privilege, or if a witness who has not yet been called is expected to assert his privilege, an authorized representative of the House or of the committee may apply to a federal district court for an order directing the individual to testify or provide other information sought by the Congress.[42] If the testimony is to be before the full House or Senate, the request for the court order must be approved by an affirmative vote of a majority of the Members present of the House or Senate. If the testimony is to be given before a committee or subcommittee, the request for the order must be approved by an affirmative vote of two-thirds of the Members of the full committee.[43]

At least ten days prior to applying to the court for the order, the Attorney General[44] must be notified of the Congress' intent to seek the order,[45] and issuance of the order will be delayed by the court for as much as twenty additional days at the request of the Attorney General.[46] Notice to the Attorney General is required so that he can identify in his files any information which would provide an independent basis for prosecuting the witness, and place that information under seal. Neither the Attorney General nor an independent counsel would have a right to veto a committee's application for immunity.[47] The role of the court in issuing the order is ministerial and therefore, if the procedural requirements under the statutes are met, the court may not refuse to issue the order or impose conditions on the grant of

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[40] See generally *Kastigar v. United States*, 406 U.S. 441 (1972).

[41] *Kastigar v. United States*, 406 U.S. at 446.

[42] 18 U.S.C. § 6005(a); See also *Application of Senate Permanent Subcommittee on Investigations*, 655 F.2d 1232 (D.C. Cir.), *cert. denied*, 454 U.S. 1084 (1981).

[43] 18 U.S.C. § 6005(b).

[44] Notice should be given to an independent counsel where one has been appointed, since he would have the powers usually exercised by the Justice Department. See 28 U.S.C. § 594.

[45] 18 U.S.C. § 6005(b). The Justice Department may waive the notice requirement. *Application of Senate-Permanent Subcommittee on Investigations*, 655 F.2d at 1236.

[46] 18 U.S.C. § 6005(c).

[47] See H.R. Rept. No. 91-1549, 91st Cong., 2d Sess. 43 (1970).

immunity.[48] However, although the court lacks power to review the advisability of granting immunity, it might be able to consider the jurisdiction of Congress and the committee over the subject area and the relevance of the information that is sought to the committee's inquiry.[49]

After an immunity order has been issued by the court and communicated to the witness by the chairman, the witness can no longer decline to testify on the basis of his privilege, "but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order."[50] The immunity that is granted is "use" immunity, not "transactional" immunity.[51] That is, neither the immunized testimony that the witness gives to the committee, nor information derived from that testimony, may be used against him in a subsequent criminal prosecution, except one for falsely testifying to the committee or for contempt. However, he may be convicted of the crime (the "transaction") on the basis of evidence independently obtained by the prosecution and sealed before his congressional testimony, and/or on the basis of information obtained after his congressional appearance but which was not derived, either directly or indirectly, from his congressional testimony.

In determining whether to grant immunity to a witness, a committee may consider, on the one hand, its need for his testimony in order to perform its legislative, oversight, and informing functions, and on the other, the possibility that the witness' immunized congressional testimony could jeopardize a successful criminal prosecution against him. If a witness is prosecuted after giving immunized testimony, the burden is on the prosecutor to establish that the case was not based on the witness' previous testimony or evidence derived therefrom.[52]

Appellate court decisions reversing the convictions of key Iran-Contra figures Lt. Colonel Oliver North[53] and Rear Admiral John Poindexter[54] appear to make the prosecutorial burden substantially more difficult, if not insurmountable, in high profile cases. Despite extraordinary efforts by the Independent Counsel and his staff to avoid being exposed to any of North's or Poindexter's immunized congressional testimony, and the submission of sealed packets of evidence to the district court to show that the material was obtained independently of any immunized testimony to Congress, the appeals court in both cases remanded the cases for a further determination whether the prosecution had directly or indirectly used immunized testimony.

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[48] *Id.* See also S.Rept. No. 91-617, 91st Cong., 1st Sess. 145 (1969); *Application of U.S. Senate Select Committee on Presidential Campaign Activities*, 361 F.Supp. 1270 (D.D.C. 1973).

[49] *Application of U.S. Senate Select Committee*, 361 F.Supp. at 1278-79.

[50] 18 U.S.C. § 6002.

[51] The constitutionality of granting a witness only use immunity, rather than transactional immunity, was upheld in *Kastigar v. United States, supra.*

[52] *Kastigar v. United States, supra*, 406 U.S. at 460.

[53] *United States v. North*, 910 F.2d 843 (D.C. Cir.), *modified*, 920 F.2d 940 (D.C. Cir. 1990) cert. denied, 111 S.Ct. (1991).

[54] 951 F.2d 369 (D.C. Cir. 1991).

While the *North* and *Poindexter* rulings in no way diminish a committee's authority to immunize testimony or the manner in which it secures immunity pursuant to the statute, it does alter the calculus as to whether to seek such immunity. Independent Counsel Lawrence E. Walsh observed that "[t]he legislative branch has the power to decide whether it is more important perhaps even to destroy a prosecution than to hold back testimony they need. They make that decision. It is not a judicial decision or a legal decision but a political decision of the highest importance."[55] It has been argued that the constitutional dimensions of the crisis created by the Iran-Contra affair required the type of quick, decisive disclosures that could result from a congressional investigation but not from the slower, more deliberate criminal investigation and prosecution process.[56] Under this view, the demands of a national crisis may justify sacrificing the criminal prosecution of those involved in order to allow Congress to uncover and make public the truth of the matter at issue. The role of Congress as overseer, informer, and legislator arguably warrants this sacrifice. The question becomes more difficult as the sense of national crisis in a particular circumstance is less acute, and the object is, for example, to trade-off a lesser figure in order to reach someone higher up in a matter involving "simple" fraud, abuse or maladministration at an agency. In the end, case-by-case assessments by congressional investigators will be needed, guided by the sensitivity that these are political judgments.

3. Grants of Special Investigative Powers

Often in high profile oversight investigative proceedings, focusing on scandals, alleged abuses of authority, suspected illegal conduct, or other unethical behavior, the Houses will vest standing committees, or specially created, temporary panels, with special investigative authorities. The most common is staff deposition authority. Thus, committees normally rely on informal staff interviews to gather information preparatory to investigatory hearings. However, with more frequency in recent years, congressional committees have utilized staff conducted depositions as a tool in exercising the investigatory power.[57] Staff depositions afford a number of advantages for committees engaged in complex investigations. Staff depositions may assist committees in obtaining sworn testimony quickly and confidentially without the necessity of Members devoting time to lengthy hearings which may be unproductive because witnesses do not have the facts needed by the committee or refuse to cooperate. Depositions are conducted in private and may be more conducive to candid responses than would be the case at a public hearing. Statements made by witnesses that might defame or even tend to incriminate third parties can be verified before they are repeated in an open hearing. Depositions can enable a committee to prepare for the questioning of witnesses at a hearing or provide a screening process which can obviate the need to call some witnesses. The deposition process also allows questioning of witnesses outside of Washington thereby avoiding the inconvenience of conducting field hearings requiring the presence of Members.

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[55] Lawrence E. Walsh, The Independent Counsel and the Separation of Powers, 25 Hous. L. Rev. 1, 9 (1988).

[56] Michael Gilbert, The Future of Congressional Use Immunity After *United States, v. North*, 30 Amer. Crim.L.Rev. 417, 430-31 (1993). See also, Arthur L. Limon and Mark A. Belnick, Congress Had to Immunize North, Wash. Post, July 29, 1990, at p. C7.

[57] *E.g.*, S. Res. 229, 103d Cong. (Whitewater); S. Res. 23, 100th Cong. (Iran-Contra); H. Res. 12, 100th Cong. (Iran-Contra); H. Res. 320, 100th Cong. (impeachment proceedings of Judge Alcee Hastings); S. Res. 495, 96th Cong. (Billy Carter/Libya).

Certain disadvantages may also inhere. Unrestrained staff may be tempted to engage in tangential inquiries. Also depositions present a "cold record" of a witness's testimony and may not be as useful for Members as in person presentations. Finally, in the current absence of any definitive case law precedent, legal questions may be raised concerning the ability to enforce a subpoena for a staff deposition by means of contempt sanctions, and to the applicability to such a deposition of various statutes that proscribe false material statements.[58]

At present neither House has rules that expressly authorize staff depositions. On a number of occasions such specific authority has been granted pursuant to Senate and House resolutions.[59] When granted, a committee will normally adopt procedures for taking depositions, including provisions for notice (with or without a subpoena), transcription of the deposition, the right to be accompanied by counsel, and the manner in which objections to questions are to be resolved.[60]

In addition, standing and special committees have been given international information gathering authority, the authority to access tax information in the custody of the Internal Revenue Service, and the authority to participate in judicial proceeding.[61]

C. Enforcement of the Investigative Power

1. The Contempt Power

While the threat or actual issuance of a subpoena often provides sufficient leverage for effective compliance with investigative information demands, it is through the contempt power that Congress may act with ultimate force in response to actions which obstruct the legislative process in order to punish the contemnor and/or to remove the obstruction. The Supreme Court early recognized the power as an inherent attribute of Congress' legislative authority, reasoning that if it did not possess this power, it "would be exposed to every indignity and interruption that rudeness, caprice or even conspiracy may mediate against it."[62]

There are three different kinds of contempt proceedings available. Both the House and Senate may cite a witness for contempt under their inherent contempt power or under a statutory criminal contempt procedure. The Senate also has a third option, enforcement by

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[58] See Jay R. Shampansky, Staff Depositions in Congressional Investigations, CRS Report No. 95-949 A, December 3, 1999 (suggesting that the criminal contempt procedure would be available if a committee adopted rules of procedure providing for Member involvement if a witness raises objections and refuses to answer; and that analogous case law under false statements and obstruction of Congress statutes would support prosecutions for false statements made during a deposition.).

[59] See examples cited in Shampansky note 63, *supra*.

[60] See, *e.g.*, Senate Permanent Committee on Investigations Rule 9; House Iran-Contra Committee Rule 6, H. Res. 12, 133 Cong. Rec. 822 (1987).

[61] For a compilation of selected grants of special authorities since Watergate, see Congressional Oversight Manual, *supra* note 1 at 86-88.

[62] *Anderson v. Dunn*, 19 U.S. (6 Wheat) 204 (1821).

means of a statutory civil contempt procedure. The three proceedings may be briefly described.[63]

(a) Inherent Contempt

Under the inherent contempt power, the individual is brought before the House or Senate by the Sergeant-at-Arms, tried at the bar of the body, and can be imprisoned in the Capitol jail. The purpose of the imprisonment or other sanction may be either punitive or coercive. Thus, the witness can be imprisoned for a specified period of time as punishment, or for an indefinite period (but not, at least in the case of the House, beyond the end of the Congress) until he agrees to comply. When a witness is cited for contempt under the inherent contempt process, prompt judicial review is available by means of a petition for a writ of *habeas corpus*. In an inherent contempt proceeding, although Congress would not have to afford the contemnor the whole panoply of procedural rights available to a defendant in a criminal case, notice and an opportunity to be heard would have to be granted. Also, some of the requirements imposed by the courts under the statutory criminal contempt procedure might be mandated by the due process clause in the case of inherent contempt proceedings.[64]

The inherent contempt power has not been exercised by either House in over sixty years because it has been considered to be too cumbersome and time consuming for a modern Congress with a heavy legislative workload that would be interrupted by a trial at the bar.

(b) Statutory Contempt

Recognizing the problems with use of the inherent contempt process, a statutory criminal contempt procedure was enacted in 1857 which, with only minor amendments, is codified today at 2 U.S.C. §§192 and 194. Under 2 U.S.C. § 192, a person who has been subpoenaed to testify or produce documents before the House or Senate or a committee and who fails to do so, or who appears but refuses to respond to questions, is guilty of a misdemeanor, punishable by a fine of up to $1,000 and imprisonment for up to one year. Section 194 establishes the procedure to be followed if the House or Senate refers a witness to the courts for criminal prosecution. A contempt citation must be approved by the subcommittee, the full committee, and the full House or Senate (or by the presiding officer if Congress is not in session). The criminal procedure is punitive in nature. It is not coercive because a witness generally will not be able to purge himself by testifying or supplying subpoenaed documents after he has been voted in contempt by the committee and the House or the Senate. Under the statute, after a contempt has been certified by the President of the Senate or the Speaker of the House, it is the "duty" of the U.S. Attorney "to bring the matter before the grand jury for its action." It remains unclear whether the "duty"

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[63] For a more comprehensive treatment of the history and legal develpment of the congressional contempt power, see Jay R. Shampansky, Congress' Contempt Power, CRS Report No. 86-83A, February 28, 1986.

[64] See, *Groppi v. Leslie*, 404 U.S. 496 (1972).

of the U.S. Attorney to present the contempt to the grand jury is mandatory or discretionary, since the sparse case law that is relevant to the question provides conflicting guidance".[65]

This potential conflict between the statutory language of §194 and the U.S. Attorney's prosecutorial discretion was highlighted by the inability of the House of Representatives in 1982 to secure a contempt prosecution against the Administrator of the Environmental Protection Agency, Ann Burford. Burford, at the direction of President Reagan, had asserted executive privilege as grounds for refusing to respond to a subpoena demand for documents. She was cited for contempt by the full House and the contempt resolution was certified by the Speaker and forwarded to the U.S. Attorney for the District of Columbia for presentment to the grand jury. Relying on his prosecutorial discretion he deferred doing so pending a court challenge to the contempt citation, and after that suit was dismissed he further delayed submission while settlement negotiations were proceeding. Ultimately the Executive turned over the disputed documents and the House withdrew its contempt citation.

The Burford controversy may be seen as unusual, involving highly sensitive political issues of the time. In the vast majority of cases there is likely to be no conflict between the interests of the two political branches, and the U.S. Attorney can be expected to initiate prosecution in accordance with § 194.

(c) Civil Contempt

As an alternative to both the inherent contempt power of each House and criminal contempt, Congress enacted a civil contempt procedure which is applicable only to the Senate.[66] Upon application of the Senate,[67] the federal district court is to issue an order to a person refusing, or threatening to refuse, to comply with a Senate subpoena. If the individual still refuses to comply, he may be tried by the court in summary proceedings for contempt of court, with sanctions being imposed to coerce his compliance. Civil contempt might be employed when the Senate is more concerned with securing compliance with the subpoena or with clarifying legal issues than with punishing the contemnor. Civil contempt can be more expeditious than a criminal proceeding and it also provides an element of flexibility, allowing the subpoenaed party to test his legal defenses in court without necessarily risking a criminal prosecution. Civil contempt is not authorized for use against executive branch officials refusing to comply with a subpoena.

(d) Alternatives to Contempt

When an executive branch official refuses to comply with a congressional subpoena and the dispute cannot be resolved by negotiation and compromise, none of the three types of contempt proceedings may be completely satisfactory. The statutory civil contempt procedure in the Senate is inapplicable in the case of a subpoena to an executive branch official. Inherent contempt has been described as "unseemly" and cumbersome. And if the

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[65] See Todd D. Peterson, Prosecuting Executive Branch Officials for Contempt of Congress, 66 NYUL Rev. 563 (1991); Hearing, "Prosecution of Contempt of Congress," Before the Subcomm. on Administrative Law and Governmental Relations, House Comm. on the Judiciary, 98th Cong. 1st Sess. 21-35 (1983) (Statement and Testimony of Stanley Brand).

[66] See 2 U.S.C. 288d and 28 U.S.C. 1364.

[67] Usually brought by the Senate Legal Counsel. 2 U.S.C 288 d(a).

criminal contempt method is utilized, the U.S. Attorney, who is an executive branch appointee may, as occurred in the Burford case, rely on the doctrine of prosecutorial discretion as grounds for deferring seeking an indictment. Further, with the expiration of the independent counsel, the often suggested possibility of seeking a referral to an independent counsel is no longer unavailable.

There are, however, several other alternatives to the three modes of contempt in the case of an incooperative executive official. The most promising and possibly most expeditious route for a House committee would be to seek a resolution of the body authorizing it to bring a civil suit seeking enforcement of the subpoena. There is precedent for bringing such civil suits under the grant of federal question jurisdiction in 28 U.S.C. 1331, and the Department of Justice has indicated that it would approve of this course of action to resolve such interbranch disputes.[68] Other alternatives include cutting the appropriations of the department or agency withholding the requested information, holding up confirmations of agency officials, or, in an exceptional case, seeking impeachment of the official in question.

III. Application of the Congress's Oversight Prerogatives: The Practicalities of Enforcing Information Gathering Demands Against Executive Branch Officials

Congress' oversight and investigatory powers with respect to the administrative bureaucracy, when viewed in their totality, are so formidable that legitimate requests for information by committees with proper jurisdiction that are pursued with a sufficient degree of tenacity and with a sensitivity for individual situational differences and limitations, should succeed in the vast majority of contested instances. My experience over almost three decades with such interbranch conflicts is that just the credible threat of a subpoena is usually sufficient to induce the release of requested information in most instances, and that the actual issuance of compulsory process normally encourages meaningful negotiations that result in satisfactory accommodations in most situations that reach that stage. I am aware of only 10 instances in history, all since 1975, in which executive branch officials (all of whom were at the cabinet-level) were cited for contempt. In only one was there vote on the floor of a House[69], the rest being issued by subcommittees[70] and committees[71]. Nine of the ten were resolved to the satisfaction of the committees seeking the information, and each of those involved claims of executive privilege by the President. The tenth did not involve a presidential claim of privilege, and was not brought to the House floor for a vote and was not pursued further.[72]

The high degree of committee success in these confrontations appears attributable to the reluctance of most Administrations, and most officials within an Administration, to be faced

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[68] See, e.g., 10 Op. OLC 91 (1986).

[69] H. res. 632, 97th Cong., 128 Cong. Rec. 31746-76 (1982) (contempt of EPA Administrator Anne Burtford).

[70] Secretary of Commerce Rogers C.B. Morton (1975); Interior Secretary Joseph Chlifono (1978); Energy Secretary Charles Duncan (1980); Energy Secretary James Edwards (1980); Attorney General William French Smith (1984).

[71] Secretary of State Henry Kissinger (1975); Interior Secretary James G. Watt (1982); White House Counsel John M. Quinn (1996); Attorney General Janet Reno (1998).

[72] Reno contempt, H.R. Rept. No. 105-728, 105th Cong., 2d Sess. (1998).

with a contempt citation, even with the almost certain knowledge such a citation will not lead to a criminal prosecution. Rather the resultant media attention and public criticism has been generally seen as unacceptable. And although there are circumstances when a congressional subpoena serves as welcome cover for officials to "involuntarily" turn over documents to committees, for the most part there is a similar pressure on officials to avoid the glare of publicity and public suspicion, and the time consuming burden of defending a withholding.

Despite the attractive power of compulsory process, it normally should not be the weapon of first resort, and in some instances may not be the appropriate vehicle to achieve the legislative goal. A subpoena is often best not issued until the informal processes of negotiations and accommodation have become unproductive. Even when that point is reached, a successful negotiating (and face saving) device for agencies has been for committees to authorize issuance of a subpoena by the chair in his discretion or by a time certain if withholding continues. The time delay has often allowed agencies to rethink positions in the light of the committee's action.

There are also circumstances when compulsory process and the threat of criminal contempt are inappropriate to achieving committee goals. If information is needed quickly, criminal contempt is a time consuming route and will not actually result in a judicial order to produce. Rather, it only punishes the failure to produce the desired documents or information. To get a production order, civil enforcement is necessary. As indicated previously, that would require a House resolution authorizing the committee to go to court for an enforcement order. The institutional downside is that what is essentially a political dispute between the branches would be left to the uncertainty and often time consuming nature of the judicial process.

Instead of prosecution or litigation, Congress has a host of other tools to secure information and testimony it needs. It can delay action on bills favored by the Administration or pass legislation that makes mandatory action that is now discretionary and is not being done. The power of the purse can be discretely utilized to put pressure on the Administration. Holds may be put on the Senate confirmation process with respect to particular or groups of individuals. Ultimately, Congress may use the power of impeachment.

A brief examination of the three areas of Subcommittee concern with OMB actions suggests that two may be more amenable to different enforcement methods.

For example, your dispute with OMB with respect to the Paperwork Reduction Act[73] appears to essentially involve your interest is knowing whether the Office of Information and Regulatory Affairs (OIRA) is effectively carrying out its statutory mission to reduce the burden imposed by information collection requests (ICR's) by agencies. The statute empowers OIRA to review and reject an ICR in part or in its entirety.[74] The statute requires that the information collection burden be reduced by stated percentages (10% each in fiscal

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[73] 44 U.S.C.A. 3501 *et seq.* (Suppl. 1999).

[74] 44 U.S.C. 3507.

years 1996 and 1997, and 5% each in fiscal years 1998, 1999 and 2000).[75] OMB has conceded that OIRA has failed to meet these statutory objectives in each year so far. Your Subcommittee seeks information about the effectiveness of OIRA's administration of the PRA, including, among other things, "actual substantive changes" made by OIRA during its review of agency ICR's. OMB's response is that "it is our view that a substantive change is 'made by OMB' only when OMB exercises its authority to disapprove a collection or when an agency withdraws a collection during our review." OMB does not deny that it may object to certain requirements in an ICR and that an agency may agree to delete them as a condition of approval for the rest of the ICR (or that OIRA has the authority to do so). It simply refuses to reveal whether it ever exercises this discrete review authority. This would appear to be an unquestionably valid exercise of the Subcommittee's oversight authority. If OIRA is never exercising such review authority, or is doing so in a manner the Subcommittee deems perfunctory, it is a matter it may deem of legislative concern requiring remedial action. Also, it is within the prerogative of the Subcommittee to *suggest* that in the future that OIRA record instances in which it has vetoed certain requirements. Of course, it may not require OIRA to do so,[76] but the agency's refusal to do so would provide further impetus for remedial legislation. To hold the Director of OMB in contempt for what may in fact be obdurate refusals to implement the law the way Congress intended, might be seen as a bald attempt to circumvent the limitations placed on the exercise of legislative power by *Chadha*.

A more direct and effective (and certainly more constitutional) manner of achieving compliance would be through the authorization and appropriations processes. Legislation directing that OIRA periodically report publically when and how it has rejected particular requirements of ICR's could be explicit. Indeed, Executive Order 12, 866,[77] which governs OIRA review of agency rulemakings, requires that an agency must identify, in the Federal Register notice accompanying the proposed rule, any changes it has made at the suggestion of OIRA. It would appear anamalous that an Administration policy voluntarily adopted to publically disclose OIRA impact in a closely analogous area, is unacceptable for OIRA Paperwork Act actions.

Similarly, the appropriations process could be used as a remedy in other areas in dispute. Your Subcommittee believes that assigning one full time employee (FTE) to Internal Revenue Service ICRs, which represent an estimated 80% of federal paperwork burden, is inadequate. Appropriations legislation could require assigning a specific number of FTE's to IRS paperwork. Finally, OMB's appropriation (not OIRA's) might be directly tied to its success in achieving annual paperwork reductions by reducing it proportionately by the percentage it fails the reduction quota. While draconian, the very suggestion might spur greater voluntary agency efforts.

Similarly, the failure of OMB to fully comply with a statutory direction[78] to issue guidance to agencies with respect to several important interpretative issues that have

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[75] 44 U.S.C. 3505 (a).

[76] See, *INS* v. *Chadha*, 462 U.S. 919 (1983).

[77] 58 Fed. Reg. 51,735 (1993), *reprinted in* 5 U.S.C. 601 note (1994).

[78] Omnibus Consolidated Appropriations Act, Pub. L. 105-277, 112 Stat. 2681 (1998).

impeded the effective implementation of the 1996 Congressional Review Act[79] has caused the Subcommittee concern. The guidance failed to include a discussion of agency documents covered by the term "rule", a statement with respect the judicial reviewability of effectiveness of covered rules that are not reported for congressional review, and clarification on whether the "good cause" exemption may be used for rules previously subject to notice and comment. Legitimate disagreements between the executive and subsequent Congresses on the interpretation of statutory provisions are traditionally resolved by legislative remediation or judicial construction in the course of litigation, not through the contempt process.

Finally, we turn to the June 26, 1998, subpoena to OMB Director Jacob Lew for information on a proposed increase in funding for the White House Initiative on Global Climate Change. A full response has been long delayed. OMB has conceded that it did not conduct a complete search for the matter encompassed by the subpoena. For example, despite a direction to provide all documents on the subject, OMB included only documents originated by OMB or with handwritten comments made by OMB, but not pertinent documents sent to OMB. Also, as part of its search effort, OMB did not contact all OMB offices or issue written directions to staff to guide the search for pertinent documents. More recently, with the revelation that several years of White House e-mails encompassing the period covered by the subpoena were known to be missing because of a computer malfunction which was not disclosed and which may contain information pertinent to your Global Climate Change technology inquiry, further delays in receiving a full response may be anticipated.

The situation with respect to the Climate Change subpoena may be an appropriate candidate for contempt action. The delay in response is now nearly two years. The initial partial response is inexplicable in view of the specificity of the subpoena. The failure to give explicit written directions to staff with respect to the search for documents was apparently an abrupt departure from normal agency practice upon receipt of a congressional subpoena. The Subcommittee has been patient in its pursuit of the documents, even soliciting the aid of a Senator who put a temporary hold on the nomination for a high Department of Energy position of the OMB official responsible at the time for monitoring the climate change funding initiative. In this instance, the Subcommittee's decision whether to initiate contempt proceedings may not only properly take into account the nature of the agency's actions in withholding of subpoenaed documents, but also the pattern of resistance to Subcommittee oversight efforts by the agency over the same period of time. Such patterns have been utilized in the past to buttress a particular instance of noncompliance.[80]

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[79] 5 U.S.C.A. 801 *et* seq. (1999).

[80] See, *e.g.*, "Proceedings Against John M. Quinn, David Watkins, and Matthew Moore (Pursuant to Title 2, United States Code, Sections 192 and 194), H.R. Rept. No. 104-598, 104th cong. 2d Sess. 27-34 (1996) (recounting pattern of White House "stonewalling" of previous committee investigations).

Mr. MCINTOSH. Thank you. Thank you very much. Let me now turn to the question period of this hearing. I've got several questions, but let me start with Mr. Rossotti. I wanted to revisit some of the discussions that we had last year after the last hearing and see what plans, if any, the IRS has in those areas. I guess the first one I would ask about was the idea that we spoke about of having the IRS send each taxpayer a simple booklet similar to what CPAs send their clients. In fact, just last week I filled mine out and got it back to the CPA who said I was late already. But I begged and he said he would get the forms filled out for me to sign next weekend.

But would it be possible for the IRS to do that? What plans would you have, if any, to try to move in that direction?

Mr. ROSSOTTI. Well——

Mr. MCINTOSH. That would allow the taxpayer to choose as their option to have the IRS fill out the form which you already provide as an option but it would be a way to facilitate that.

Mr. ROSSOTTI. I think, Mr. Chairman, the basic idea behind your suggestion is that the taxpayers would have an option to provide some or all the information that's required to fill out the tax form and then would have the IRS, in some way, complete the process. Or have a process where they wouldn't have to do that work themselves. And that is a part of a broader issue we refer to as return free filing. That's a topic which has been studied over the years in a number of given ways, and the Restructuring and Reform Act that was passed by the Congress in 1998 requires us to—it requires the IRS to study various methods of doing that kind of thing, what's generally referred to as return free filing. Basically, we do two things.

One is to produce a report each year on the progress that we're making on doing that and second to try to see if we can develop a way of doing it. I believe the year is 2007. There are a variety of ideas for how this could be done. Many of them revolve around the ideas of using the information, as I think you suggested last year when we talked in your office, using the information the IRS already has in the form of information reporting such as 1099s and W–2s to prepare part of the return. The issue then is if we did that, where would we get the rest of the information on such things as the number of dependents that you have and the filing status you have and other kinds of deductions?

Mr. MCINTOSH. But that's exactly what you fill out on the form for your accountant. I mean, and then they keep it from year to year so you fill out a little box that says has it changed from last year.

Mr. ROSSOTTI. Exactly.

Mr. MCINTOSH. The answers to those questions aren't complicated. Why does it take 7 years to come up with an answer? My suggestion is you hire Celera if that's the problem. They beat the human genome project and spent a lot less money and just ask them to do it.

Mr. ROSSOTTI. The real question is not whether it would take 7 years to do it, although with the computer systems that the IRS has, actually it probably would take a lot longer than developing the human genome project, in all honesty, since we're still using

systems that were built in the 60's. But there are some significant issues as to what the taxpayers want and also, oddly enough, what kind of paperwork would we put on small business in this area. One of the suggestions or one of the ways that this information could be provided would be by enhancing what's called the W–4 form, which is the form that the employers submit to their businesses to do exemptions for employees. That's one of the methods by which this information is already partially collected.

So that is one of the suggestions. We would build on that. If we were to require the taxpayer to send information about some of these details to the IRS directly, we have learned from previous research that that is not necessarily something that the taxpayers would prefer to do, because it might actually require them to send us more details about their personal situation than they currently do, even though it would, on the other hand, eliminate some of the computational burdens. So those are some of the issues.

We have actually completed some initial focus group studies on this subject with taxpayers and have found that actually there is more receptivity than what there was 5 or 6 years ago to this idea, although it's still very mixed. Some taxpayers basically don't like the idea of sending more information and having the IRS produce their returns effectively.

There are also some very significant, I have to say, issues about how this would be done because, for example, today the single biggest error that occurs on tax returns from individual taxpayers actually has to do with the whole issue of designating your filing status, whether you're married, head of household as well as the number of exemptions you're entitled to. It's actually quite complicated under the law to determine in some cases whether you're entitled to an exemption for a certain individual as a dependent. Also, it can be complicated to determine other credits and exemptions that relate to the taxpayer's personal situation, such as the EITC credits, child credits, education credits. These all have to do basically with the questions what is a dependent, who is a child, what is your household status. Today that area of Tax Code and that area of filing generates more errors than anything else.

As a result, the IRS has worked on a number of strategies, including, of course, trying to match social security numbers and other identification numbers that taxpayers put on these forms, and that screen out a considerable number of errors.

It's not clear how that would be done. It's one of the issues that we have to study.

I don't mean to bore with you a long litany. There is a valid idea here. We are proposing it. As a matter of fact, I have a hearing tomorrow in the Senate on this very topic. We will be issuing our first preliminary report later this summer on this subject.

Mr. MCINTOSH. Let me say I hope it's much better than what you just described now because you're making the whole question much too complicated. It doesn't have to be required, so it's not black or white. You have to require it or not let people do it. There is a middle ground of making it optional.

And second, all of those complicated questions on dependents have to be resolved anyway and an accountant doesn't know any more about a person's family relationship is than the IRS does.

They have to rely on the person answering the same questions and then filling out the forms. So my question is: why wouldn't the IRS be willing to say to the taxpayer let me give you an option for us to do that? You fill out this form that you would otherwise have to fill out for your accountant, we'll calculate the tax you owe and you send us the money.

Mr. ROSSOTTI. As I said, generally the idea is that we would take some of the information from the taxpayer and take other information we already have from W–2s and 1099s. I think the issues that revolve around that are how much information would you actually have to send the IRS to allow us to do that. That's the point I was getting at. You know it may be more information than even the taxpayers currently submit to the IRS.

Mr. MCINTOSH. So they make a choice if they don't want to do that, they do it themselves.

Mr. ROSSOTTI. The other one is one of timing. 75 percent of the taxpayers receive refunds today, roughly. And by statute and by expectation we get those refunds out within about 6 weeks if they're paper returns and 2 weeks if they're electronically filed returns. Currently we don't get W–2s, the information from W–2's, from the Social Security Administration until summer and we don't get much of the 1099 information we would need to match up. We do get it in the first quarter, but we usually get corrections that don't take place until the summer.

So from the time standpoint, unless there was some major structural change in the way that the wage information is reported and other information is reported, we wouldn't be able to actually produce those returns and send refunds out until about October or November, which I think would probably not be acceptable to most taxpayers.

So that is an issue that is not fully within the control of the IRS. It would really relate to rethinking how that whole process works, reporting wages and other information.

Mr. MCINTOSH. Let me make sure I understand. So my employer, now the Federal Government, sends me a copy of that W–2, they don't send you a copy of it at the same time.

Mr. ROSSOTTI. No. It's to avoid a burden on small business. The employer sends the information to the Social Security Administration and the Social Security Administration processes it and does editing and so forth. We generally get the information around July or August. We do get the information directly from—for example, if you had interest and dividends and that's reported by your bank on a 1099 form we do get that information either at the end of February or under the new law it could be the end of March. But then there are subsequent corrections that take place. We get a billion documents like that. So it's a major operation. So by the time we actually have that information in usable form from the Social Security Administration and the vendors, it's late summer, which obviously is too late to use for at least the current tax processing cycle. Those are some of the issues.

Mr. MCINTOSH. I understand that. Let me make a recommendation as you consider that report then because it can help us here in Congress, and that would be to identify the parts of those ideas that could be done immediately. And that may mean the taxpayer

has to send you their W–2 rather than you add it in for them. You may want to do it optionally rather than require. And start at that level, what could be done now, what would need to be changed, what would you have to get from the Social Security Administration so that we could start implementing parts of it sooner and see how the public responds to it.

I've got some more questions, but I have also used up my time. So let me turn now to Mr. Kucinich for questions he has.

Mr. KUCINICH. Thank you very much, Mr. Chairman. Before I begin with a few questions, I want to ask the indulgence of the Chair if I may make an introduction. We're pleased to have with us visiting Washington today a member of Parliament and one of our counterparts from the United Kingdom. I would like to ask Member of Parliament Ian Stuart to please stand up and be recognized. Welcome.

And I'm about to have a privilege that many Americans would love as we approach the day of reckoning with the tax man, and that is a chance to ask the Commissioner of the IRS some questions. So I'm—and before I do that I want to say to Ms. Noe, you know, I hear what you're saying. And I think it's important that you and the other representatives from Mr. McIntosh's constituency are here today because Congress needs to be informed as to how people are impacted by the laws which are passed and that you not be made to feel like you're some kind of criminal because you can't figure out these forms that you're given or that the demand to keep pace with that is so strong that it really makes you feel what's the use.

So we, you know, that's why your chairman—our chairman is holding these hearings and that's why I support this continual look at why we are asking for this information and what's the purpose.

I would like to ask Commissioner Rossotti what percentage of the increase in the IRS's paperwork burden results from legislative changes?

Mr. ROSSOTTI. Well, according to the numbers I had during fiscal 1999 there were about 200 million hours increase and about——

Mr. KUCINICH. I'm sorry.

Mr. ROSSOTTI. About 200 million I believe was the total increase and I believe 148 million, which would be about 75 percent, was statutorily driven.

Mr. KUCINICH. You know, I note the report that was done by the GAO, a very interesting report I might add. And as I was looking at it where they really do substantiate the IRS has this lag in responding to the requirements of the Paperwork Reduction Act, but when you get to the chart, and you see that the good news, Mr. Chairman, is that there is—that Agriculture, Defense, Interior, Labor, Federal acquisition regulation, Federal Energy Regulatory Commission, FTC, the Nuclear Regulatory Commission and Small Business Administration all are indicating reductions are occurring from 1998 to 1999. So we are seeing some progress. And when you—if as the Commissioner states the increase in paperwork is a result of legislative changes, as I think—also the OMB report characterizes by citing the specific statutes where an increase in paperwork ensued, for example, and this is one of the ones that was interesting, since I have a daughter who's about to begin college, the

student loan interest deduction to reflect new code section 221 is a form of a paperwork increase. So there are education credits as a form of a paperwork increase, child tax credit paperwork increases.

So, on one hand, we have some increases in paperwork that may actually be something that American people would find beneficial. On the other hand, there are areas in paperwork which we need to keep striving to reduce. I just wanted to thank Mr. Rossotti for pointing out that even though your paperwork burden seems to be increasing and you're increasing the burden in turn for Americans, that some of these statutory requirements involve things that might actually be beneficial. Would you agree with that?

Mr. ROSSOTTI. Yes, I think that what tends to drive the 75 percent are the statutory items that have been put in the Tax Code by Congress that benefit the taxpayer financially, such as the child tax credit and the other education credits.

Mr. KUCINICH. I wanted to go on record though that Congress is passing some laws that would appear to improve or increase paperwork, that the American people would know that those laws are a benefit to them. I wanted to make that point for the record.

I also want to ask you if you have other good news from the IRS in terms of how is the electronic filing going since, you know, hopefully that's helping to reduce paperwork. Could you provide a brief report on that?

Mr. ROSSOTTI. Yes. As a matter of fact, I think that is actually good news. Because our electronic filing this filing season is up about 16 percent. It's above what we expected. We'll end up receiving about 34, 35 million returns electronically—this is individual returns—about 27 percent of the total. And, of course, in the Restructuring Act Congress put a great deal of emphasis on this way of reducing burden by setting a goal that we try to reach 80 percent electronic filing.

I do want to note one thing along these lines, and I think it's a bit responsive in a different way to the chairman's idea of how we could set up a system where the taxpayer would not actually fill out a return but would fill out a question and answer form to provide the information. For the first time this year we have providers that we've worked with who are offering over the Internet the ability for a taxpayer to sign onto the Internet and basically fill out their tax return online by simply answering questions. And then the Internet system computes the actual return and sends it to us.

Now it doesn't take advantage yet of the information that we already have. You have to enter, for example, your 1099 information because we don't have that information yet but it does go on those same lines. I want to point out that in the President's budget for this year we worked with the Treasury Department to get in an item which says that the IRS by 2002 is required or supposed to get to a situation where we can offer free filing over the Internet to any taxpayer, any individual taxpayer.

This could be done through cooperation with private industry. But it would be basically building on what was already done for the first time this year actually as an option. Part of the 35 million returns we've got were this way. I think, given the Internet is so important and popular, this may be a practical way of trying to move

to that idea where there's really no paper in it. You just sign on to the Internet, it asks you questions, you answer the questions, it computes the return and sends it to us and that's the end of it.

Mr. MCINTOSH. That's great.

Mr. KUCINICH. I want to thank the Commissioner and I'll try to—I will visit with Mr. Stuart for a second. I will try to come back for further questions. But thanks for holding this hearing.

Mr. MCINTOSH. Absolutely. Thank you, Mr. Kucinich, and I appreciate that a great deal. I can't resist though to say the solution to the problem of all these benefits we've added in Congress have been given to us by the two folks from Indiana and going to the flat tax where we don't have to confer benefits to individual taxpayers but everybody gets a lower rate.

Let me ask a question to Mr. Spotila. During the last hearing I asked OMB's witness about Vice President Gore's involvement in the paperwork reduction due to his various roles on the Reinventing Government Initiative. The Acting Deputy for Management testified that the Vice President had not been involved at all in the Government's paperwork reduction efforts as of that hearing.

As a consequence, on April 20th and May 11th I wrote the Vice President again asking him about his efforts on paperwork reduction. My question for you is since May 1999 what involvement, if any, has Vice President had with OMB about additional governmentwide paperwork reduction; i.e., Reinventing Government?

Mr. SPOTILA. Yes, Mr. Chairman, at least based on my experience. I don't know that I can answer as to everyone at OMB, but in terms of my experience, the Vice President's Office and the National Partnership for Reinventing Government, which works closely with the Vice President's Office, have focused quite a bit on information technology initiatives, the potential use of electronic technology to streamline paperwork burdens and achieve other efficiencies. I think that their focus has been more on that information technology area than it has been on interacting either with us or with the agencies on specific information collection.

So, at least to my knowledge, I think that's been where they've decided it would be wisest to focus their efforts.

Mr. MCINTOSH. OK. Thank you. One other question that I've got for the IRS Commissioner, Mr. Rossotti, and that was the other idea that we had talked about in terms of using a group of small businesses to ask them not as a focus group so much but what their experience is when they look at the forms in terms of where there's duplicate information and other ways of trying to get input from small businesses.

Were you able to do any of that in that review process?

Mr. ROSSOTTI. We have had a number of initiatives to ask various taxpayers, including small businesses, for their input. I mentioned the check box proposal which came out of the citizens advisory panel, which includes several small business owners. I think the very small businesses, the really small self-employed businesses, will probably be the ones that benefit by that particular proposal.

We have another initiative that we're just starting along those lines. We have what we call a small business lab up in the Seattle area, which is a group of IRS employees that work directly with

small businesses in that area to solicit inputs, and one of the initiatives that we have for this year that we are just starting is to do precisely as you suggest, which is to solicit both over the Internet and in person comments on specific forms that small businesses use and we're going to analyze all those and try to correlate them with problems and errors that taxpayers have on specific forms and use that as feedback.

So those are two specific initiatives. I would also like to note something that I'd welcome, Mr. Chairman, an opportunity to perhaps visit a site with you. We have a site in Indianapolis, an IRS site, that I have been to within the last couple of months. What we did with their objective is specifically to research this whole issue of forms and filings. And up until now they have focused predominantly on individual forms. And one of the initiatives that we have come up with, which we've implemented, is to try to use the information we have to find out people who don't have to file at all. We actually have several million forms—you know, filings that we get where the people think they have to file and they don't have to. As a result of their research in Indiana, we have sent out about 4 million letters to people, many of these are elderly people, for example, that continue to file because they just have always been doing it, but because of their situation they don't have to. Research showed that about half of them, once we sent this letter, realized they really don't have to file.

They're now going to be working on some new things on the business side, some corporate forms. It's a group of researchers that are based in Indianapolis that really energized this. We've now connected them up with the people back in Washington and actually designed the forms. So we have those initiatives.

Mr. MCINTOSH. Let me take you up on that offer some time when you're traveling that way and I'm back there, whenever I'm not here.

Mr. ROSSOTTI. I'll do that. It just occurred to me at this hearing, I didn't make the connection, but I was out there only a couple of months ago, that they're doing that. So we have those initiatives.

Could I just mention one other thing that I hope will accelerate this process of not just the forms but the whole issue of small businesses. Part of our broader modernization of the IRS is reorganizing the whole agency and that was provided for in the restructuring format. One of the major components of this is setting up a whole new section within the IRS called the Small Business and Self-employed Operating Division, which will have complete responsibility for dealing with about 35 to 40 million small businesses as well as self-employed individuals. One of their arms, one of their key arms will be a taxpayer education and communication group. Their entire focus will be working with small businesses to reduce burden and figure out how we can get things right from the beginning.

That will be going into operation later this year and will be over the following year really standing up, as we call it. We hope that will provide a place where we will have a specific group of people whose full time, only responsibility will be working with small businesses to try to figure out how to solve some of these problems.

Mr. MCINTOSH. Excellent. Let me also suggest to you that one perspective that I found helpful in these oversight hearings because it's easy to get into the abstract, but one that brings it down to a very important question for citizens is how do these small business paperwork requirements affect the employment decision, and specifically what Cindy Noe mentioned in terms of her daughter deciding to give up her small business and therefore not employ people.

At a previous hearing we've actually compiled from small businesses all the different forms and books that they have to read through for each employee, and it's quite impressive. It's not just IRS, as Cindy mentioned. There are a lot of other agency requirements there too. So let me urge you to take back to your folks in that group, which I am delighted to hear is engaged, that conceptually think of a project at least that would focus on the employment decision, the employer-employee and how things that they might assume are unrelated to that actually influence that decision.

Let me switch gears slightly here and ask Mr. Spotila, you mentioned in your testimony several things that the agencies are doing and planning to do. And I commend them for doing that. Let me focus in directly though on the role that OMB, and specifically OIRA, has had in helping the agencies to identify specific paperwork reductions either in items that are up for renewal or in existing items that are in their inventory of forms approved by the Government. Can you list for me anything that they've initiated at OIRA and the agencies have taken up or even that they've rejected?

Mr. SPOTILA. I'm not sure if I'm entirely following the question. So let me try to answer it and perhaps if I don't quite get it focused the way you'd like it I would be happy to clarify further. We work with the agencies on something like 3,000 to 3,500 information collection requests a year. We have about 20 people at OIRA that do this along with their other responsibilities, which include regulatory review, another key aspect of their jobs. And our people I think for good reason focus their efforts, A, on the ones that are most important, in particular, and second those where it looks like there is some opportunity for improvement.

In general, we try, and it's been our experience this is the most successful way to actually gain good results, we try to get the agency to see the benefits of taking a second look and making more efficient decisions. We try and integrate their efforts with information technology accomplishments. And we try and develop a good cooperative working relationship with them in an effort to get to the goal I think that you and I both share, which is to try to streamline their collections and reduce the burden while still enabling them to obtain the information.

Mr. MCINTOSH. My question is can you report to me or have you asked those 20 employees what ideas have they been responsible for that have resulted in an actual reduction in paperwork?

Mr. SPOTILA. It's difficult and I have asked them. What they are telling me is that the process does not involve them telling an agency to do this or do that necessarily as much as it is working with the agency to try to tackle a problem and improve it. So let me give you, as an example, we might look at a request coming out

of the Department of Labor to do a survey on equal employment opportunity compliance. Our statistical policy people who are experts on surveys will become involved in this, looking at how many people you actually need to survey. If the survey calls for asking more people than you need, we'll make that kind of an observation, or we'll engage statisticians at the Department of Labor.

Mr. MCINTOSH. But you have veto power. You can go beyond observing and tell them they can't do it.

Mr. SPOTILA. What we found is that often we don't need to. We've indicated to you those instances where we've had to use the so-called veto power—and there really aren't very many of those. What we find is that developing that relationship with the department in this way leads to better results.

Mr. MCINTOSH. OK. I understand that sort of activity. And those are, I take it, generally renewals or in most cases new paperwork collections?

Mr. SPOTILA. They could be either one, right.

Mr. MCINTOSH. What about the set of existing paperwork requirements and having your staff go back and review those and call the agency up and say you know we found this and we think you can reduce the burden by doing this to change it? So it's a proactive rather than a reactive role. Does that ever occur?

Mr. SPOTILA. As you know, we review these at least every 3 years because the approvals cannot exceed 3 years. When we're doing 3,000, 3,500 a year, in general I think we have focused our efforts on the new ones coming in, whether a renewal or an information collection, rather than going back over reapproved ones to try to reexamine whether they could be done.

Mr. MCINTOSH. Let me just stop you right there though. That is an absolute failure of your mission under the Paperwork Reduction Act, which was to reduce the burden. Reduction implies you take existing burden and go back and eliminate some of it. That means you have got to review them and identify which ones can be reduced. I mean you've just told me that you absolutely failed in the mission of your agency under that act.

Mr. SPOTILA. Respectfully, I don't agree with you.

Mr. MCINTOSH. The numbers show you do. They're going up rather than going down.

Mr. SPOTILA. Let me——

Mr. MCINTOSH. Now we know why because you don't do it.

Mr. SPOTILA. Let me make three observations here. First of all, as we have said, the agencies bear the primary responsibility under the Paperwork Act. As Mr. Rossotti has explained, we often get great cooperation from agencies that are at least looking at how to do this. They are often in a better position than we are to generate those kinds of ideas.

Second, we are very much interested and have been working with the agencies in the information technology area to take advantage of the potential for streamlining in that fashion. And so, our general work in the information policy area is one that we think proactively will lead to improvements down the line.

The third aspect is the initiative that I referred to. We recognize that this is a difficult problem. The answer we think is to engage people, including people in the private sector, small business own-

ers and others, in an effort to look at where our efforts should best be directed most efficiently and for the most effectiveness. So we acknowledge there is a great need to be proactive here.

Mr. MCINTOSH. I'm going to have to recess the hearing because I have to go vote on another committee. I must comment that that's pretty late in the process for a bill that required you to start doing this in 1996, but I guess better late than never.

Let me now recess this hearing and we'll come back after the other committee has adjourned.

[Recess.]

Mr. RYAN [presiding]. The hearing will come to order. Thanks for waiting, everybody. I understand Dave, the chairman, had to leave. We have some votes coming up as well. I would like to ask OMB, the representative from OMB a question if I may.

The IRS accounts for nearly 80 percent of the total government-wide burden on the American public. Even after our April 15, 1999 hearing OMB reported to us on March 24, 2000 that it continued to have only one staff member devoted part time to work with the IRS on paperwork burden reduction initiatives and review IRS paperwork submissions to OMB for PRA approval. Why didn't OMB increase its staffing devoted to IRS, No. 1, and what changes did OMB make in IRS's December 1999 proposed ICD submission to reduce paperwork burden in 2000? And if none, why especially after the April 15th hearing last year and our extensive correspondence with OMB since then?

Mr. SPOTILA. In terms of staffing, first of all, Mr. Chairman, since the initial passage of the Paperwork Reduction Act in 1990, OIRA has assigned one individual to review these paperworks. We continue at that staffing level today. Our sense is, as the Paperwork Act contemplated, the key responsibility for this type of paperwork reduction necessarily rests first with the agency and, as Mr. Rossotti had said earlier in his testimony, the IRS has been working extensively at trying to examine how they might try different approaches that would lead to significant burden reduction. So our effort with them has been aimed at working with them cooperatively.

As I had indicated in my testimony, our focus is also to work with them and other agencies in a new initiative that will engage people from the private sector broadly in an effort to look at how we might proactively make significant reductions in the paperwork burden associated with tax compliance. The answer we think is not adding a second or a third person from OIRA to reviewing individual IRS paperwork submissions, but rather to work with IRS and with people from the private sector on broader measures that will use information technology and perhaps new approaches, including—the chairman earlier this morning had some suggestions of his own, including suggestions like that, to see what can be done that would have a significant broad impact. In terms of the changes in the ICB submission from the IRS, my recollection is that again in working with the IRS we took their submission—I would be happy to get to you more specifically, I can't recite to you a change that we made off the top of my head now, but I would be happy to respond in writing.

[NOTE.—See subcommittee's April 14, 2000 and June 20, 2000 followup letters (Question #2) and OMB's June 12, 2000 reply (Answer #2, 2nd paragraph.]

Mr. RYAN. If you could respond in writing. Let me ask you this, our chart 3—I think you saw that before—our chart 3, which I think they will show on the flat screen there, shows that 60 of the most burdensome paperwork requirements, each totaling over 10 million hours of the public time, equals 85 percent of the total governmentwide burden on the public. Which of these 60 are being targeted by OMB for reduction and the rest of the Clinton administration? Have you considered awarding a contract for an analysis of opportunities for reduction in these 60 paperwork requirements or if you haven't, would you consider doing so? If you could provide us for the record the dates of the last substantive revision of each of the top 60 and the number of hours reduced as a result of that revision effort.

Mr. SPOTILA. We would be happy to supply that for you.

[NOTE.—See subcommittee's April 14, 2000 and June 20, 2000 followup letters (Questions #3) and OMB's June 12, 2000 and July 19, 2000 replies (Answer #3.]

Mr. RYAN. If you could, I would appreciate that. I would like to ask the witness from CRS a quick question if I may. On page 16 of your written statement you point out that President Clinton's regulatory reviews, Executive order, I think it was 12866, "requires that an agency must identify in the Federal Register notice accompanying the proposed rule any changes it has made at the suggestion of OIRA." You questioned why the administration would voluntarily disclose OIRA impact in its regulatory reviews but find it unacceptable to voluntarily disclose OIRA impact in its paperwork reviews. Please review the options you indicated in your statement on how we get OMB to fully report the results of its paperwork reviews.

Mr. ROSENBERG. Well, certainly OMB could replicate voluntarily the requirements of the Executive order which, as I stated and which you repeated, impose an obligation on the agencies when they publish a regulation in the Federal Register to at the same time make publicly available the draft rules that it originally submitted for review. And if there were changes in those drafts in the rule that is published in the Register for public comment, they must explain why they were made. Also there is also an obligation in the Executive order on OMB to do the same thing at the same time. That has been interpreted by OMB, as I understand it, to include, for instance, reviewing in its files the communications with the agency, including reviewing the drafts. So that that could be replicated either voluntarily by OMB, or perhaps the President could issue an Executive order specifically with respect to the Paperwork Act directing that kind of public disclosure, or Congress could pass some legislation imposing that obligation.

Mr. RYAN. Would you recommend that?

Mr. ROSENBERG. I think the easiest path would be to point that out perhaps to the President and ask him to——

Mr. RYAN. Do an Executive order.

Mr. ROSENBERG. That's quick, easy, and doesn't require legislative process.

Mr. RYAN. Thank you.

Ms. Kingsbury, I just had one question I wanted to ask you. In OMB's just issued report it identifies the last valid OMB approval, if any, for each illegal information collection in continued use for dates from 1978 to 1989, i.e., from 11 to 22 years ago. For example, the State Department's statement of nonreceipt of passport dates back to 1978. Should Congress consider sanctions for agency policy officials who knowingly and repeatedly violate the Paperwork Reduction Act or who do not promptly correct violations of law? If not, what does GAO recommend?

Ms. KINGSBURY. I think in the hearing last year we recommended or we at least observed that it would be possible to focus on paperwork reduction and responsibilities of those officials who have that as part of their portfolio by making it an explicit part of their performance contracts. And we have found in GAO, certainly in our own internal activities, that, when you focus on things at that level, things tend to get done. There could also be created specific goals in the agency to achieve the same purpose.

I'm not sure legislative sanctions are a very efficient way of doing the same thing. I think it's probably better as administrative process.

Mr. RYAN. OK. Thank you.

I would like to finally just ask Ms. Noe and Mr. Runnebohm your take, your comments on what you've heard today. What do you think after participating in this panel today, what's your take on what you've heard from the other witnesses?

Ms. NOE. I guess the resounding question is, will anything change because of what took place here today? But in deference to Commissioner Rossotti, he has a tough job, a very, very tough job. And it is a job that—you talk about trying to go against the tide. I can't imagine any other setting that would be tougher. And yet, he's working with a profoundly and systemically broken system that has resorted to Band-aid "fixes" and the mentality of "let's help this group a little, now we have to balance it out by helping this group a little and let's not forget about them." And, to his credit, I'm sure he is always responding to legislation that has passed, bringing the IRS code into compliance.

And I go back to, we need to clear the decks, set our sights, and let the American people know that they will be seeing changes. They will be dramatic. They will be just and simple. Begin to talk to us like we have an ounce of sense and communicate a broad message of, "Our government does great things for us." It's established by God that government is an institution we must have. It does great things. Tell us what those things are and begin to see in us that we want to join forces and march in the same direction. We do understand we have a responsibility to pay taxes to government, and instill in people a sense of honesty and dependability and resourcefulness. And gosh, we'd be so much better off.

Mr. RYAN. Here I've got to tell you as a freshman Member of Congress I am still naive enough to think we can get that done 1 day.

Ms. NOE. Well, don't tell me we're not.

Mr. RYAN. Thanks.

Mr. Runnebohm. Did I pronounce your name correctly?

Mr. RUNNEBOHM. I would have to second what Ms. Noe said. I believe that's the route we need to take. You know, dealing with this type of thing in a government always reminds me of trying to fight with a 10,000-pound marshmallow. Where you do start? But I believe we need to basically set aside what we're doing now, especially with the IRS because you can't fix something that is totally broken. And I believe that system is totally broken. I believe it needs to be set aside.

You know, I for one think the idea of a flat tax with no deductions that would be fair for everyone would work. I'm sure there would be some problems at first getting it in place, but there is no reason why it can't be done. Most of the business people I know, the great majority of them, are very patriotic, they're very willing to pay taxes. And they recognize that we pay taxes for good causes for the most part. The problem is not being able to know whether you're paying the right amount of taxes or not and all the special interests, that special interests that are involved today that pull the Tax Code in all different directions and keep adding layers and layers of more regulation instead of simplifying things. I think it's time to call a halt to that and let's do a flat tax with no deductions, everybody in the country pay their fair share and do more productive things with our time.

Mr. RYAN. Well, thank you very much. I think some of the interesting statistics about that, I think we spend 5.6 billion man-hours a year just complying with the Tax Code. We spend about $250 billion paying somebody to put our taxes together. It is pretty crazy. Thankfully this year we got 2 extra days because the 15th falls on a Saturday.

Mr. Rossotti, I want to ask you a quick question. We have a bill on the floor today or tomorrow on sunsetting the Tax Code by the year 2004. As you know, the Tax Code doesn't have a sunset clause in it like most bills that come up for reauthorization. I would venture to guess what your answer would be but I would still like to hear what your answer would be on the Date Certain Act. Maybe you have qualms of the details but what do you think of the idea of saying a date certain in the future, not tomorrow but 4 years from now Congress has to act on either reauthorizing the current code or offering up its replacement and have a sunset date in a good distance in the future? What do you think of that?

Mr. ROSSOTTI. Well, one of the things I have learned—I have been in this office a couple years—is that I think about where I have to stop advising Congress what Congress should do, because I have enough trouble advising myself in my own agency what we should do to cope with this. I think the question, with all seriousness, is one that is a highly political question that really is something that is appropriately answered by the President and the Members of Congress.

Mr. RYAN. What does Citizen Rossotti think about that.

Mr. ROSSOTTI. I will have to wait until I'm a private citizen to answer that question. In all honesty, if it's a question about my agency, I try to be very fair, but I think it's a profoundly political question. I think you as Members of Congress are the right people to answer that question.

Mr. RYAN. We'll let you off on that one. I'd like to thank everybody for attending. Some of the Government witnesses, we will be sending some followup questions. We would appreciate if would you get back to us with answers as soon as you can.

Thank you very much for coming. This hearing is adjourned.

[Whereupon, at 12:22 p.m., the subcommittee was adjourned.]

[The prepared statement of Hon. Helen Chenoweth-Hage and additional information submitted for the hearing record follow:]

Statement of Congressman Helen Chenoweth-Hage
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs
Committee on Government Reform
B377 Rayburn House Office Building
April 12, 2000

Thank you, Chairman McIntosh. I would like to thank the Subcommittee for taking the time to hold this hearing, "*Reinventing Paperwork?: The Clinton-Gore Administration's Record on Paperwork Reduction*". I am sure that this hearing will bring much needed light to the area of government paperwork.

One of the most insidious things about the federal government is the amount of paperwork that it produces. All to often, we hear the clarion call of the environmentalists calling for reductions in logging for environmental reasons. However, we rarely hear about them encouraging the government to reduce its reliance on paper.

The facts are unavoidable. The computer was supposed to herald the growth of a new, paperless, and more efficient society. However, almost precisely the opposite seems to have occurred. Since the introduction of the computer as a tool of government use, the paperwork requirements have *grown*, not shrunk. Through this growth in paperwork, the American people are now overregulated, overtaxed, and overburdened with copious amounts of governmental paperwork each year.

After examining the bulk federal paperwork requirements, one culprit stands out: the Internal Revenue Service (IRS). Why am I not surprised by this? The answer is a simple one. The IRS creates nearly eighty percent of the paperwork burden for the citizens of the United States. This governmental leviathan must be stopped. We need reform; we need it now, not later.

One things is sure, the amount of paperwork *must* be reduced. The executive agencies *must* come into conformity with the law of the land. For too long, we have let these government agencies slid in their compliance. No more.

I look forward to hearing from today's witnesses and listening to what I am sure will be some creative explanations when speaking about their noncompliance with the law.

Mr. Chairman, thank you again for holding this hearing. I genuinely appreciate your oversight and attention to detail with respect to the problems of overregulation and the excessive burden that the government imposes upon American citizens.

Thank you, Mr. Chairman.

April 14, 2000

BY FACSIMILE

The Honorable Jacob J. Lew
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Director Lew:

This letter follows up on the April 12, 2000 hearing of the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, entitled "Reinventing Paperwork?: The Clinton-Gore Administration's Record on Paperwork Reduction." As discussed during the hearing, please respond to the attached followup questions for the record.

Please hand-deliver the agency's response to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building not later than noon on Friday, May 5, 2000. If you have any questions about this request, please call Professional Staff Member Barbara Kahlow on 226-3058. Thank you for your attention to this request.

Sincerely,

David McIntosh

David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs

Attachment

cc: The Honorable Dan Burton
The Honorable Dennis Kucinich

Q1. OMB's Passive Role in Paperwork Reduction

a. On December 6, 1999, the Subcommittee asked 28 departments and agencies to identify any specific paperwork reduction candidates added by the Office of Management and Budget (OMB) during a six-month period in 1999 (from July 1st to December 31st). The agencies reported **no** candidates added by OMB from the 7,563 possibilities. Why should Congress continue to fund OMB's Office of Information and Regulatory Affairs (OIRA), which was established by the Paperwork Reduction Act (PRA) of 1980?

b. On December 6, 1999, the Subcommittee asked 28 agencies to identify any substantive changes in agency PRA submissions made by OMB during the same six-month period in 1999. The Subcommittee analyzed the agency replies by reviewing OMB's actual PRA dockets. The result was that OMB only made three substantive changes, which resulted in a trivial amount of burden reductions -- a mere 1,915 hours. Why has OIRA during the Clinton Administration taken such a passive role in stopping burdensome paperwork proposals which exceed specific statutory prescriptions? Again, why should Congress continue to fund OMB's OIRA, which was established by the PRA of 1980?

c. Since President Clinton's regulatory reviews Executive Order 12866 specifies certain disclosure requirements for OIRA to follow "to ensure greater openness, accessibility, and accountability in the regulatory review process," including revealing changes made by OMB during the course of OMB's review, why is OIRA resisting the Subcommittee's request to disclose OMB's role in its review of agency paperwork submissions?

Q2. Transfer of OMB FTEs to IRS for Paperwork Reduction

The Internal Revenue Service (IRS) accounts for nearly 80 percent of the total government-wide paperwork burden on the American public. Even after the Subcommittee's April 15, 1999 hearing, on March 24, 2000, OMB replied that it continued to only have one staff member devoted part-time to work with the IRS on burden reduction initiatives and to review IRS paperwork submissions for OMB PRA approval. Why hasn't OMB increased its staffing devoted to IRS paperwork? And, what changes did OMB make in IRS's December 1999 proposed ICB submission to reduce paperwork burden in 2000? If none, why, especially after the Subcommittee's April 15, 1999 hearing and its extensive correspondence with OMB since then?

Q3. Top 60 Most Burdensome Paperwork. Sixty of the most burdensome paperwork requirements - each totaling over 10 million hours of the public's time - equal 85 percent of the total government-wide burden on the public. These 60 include some that are ripe for review and some that have not been reviewed at all during the two Clinton-Gore terms. For example, OMB's docket for the 12th biggest, imposing nearly 80 million hours on the regulated public - Labor's Process Safety Management (PSM) of Highly Hazardous Chemicals - indicates many public complaints with the paperwork and many public recommendations for change. A second example is FDA's Investigational New Drug (IND) Regulations - the 40th biggest, imposing over 17 million hours on the regulated public. OMB's docket shows no changes in paperwork for this FDA

requirement during the two Clinton-Gore terms. Which of the 60 are being targeted by OMB for reduction in the rest of the Clinton Administration? Has OMB considered awarding a contract for an analysis of opportunities for reduction in these 60 paperwork requirements? If not, will OMB do so? Please provide for the hearing record the dates of the last substantive revision of each of the top 60 and the number of hours reduced as a result of that revision effort. Please do not include any adjustments (e.g., correction re-estimates of burden or changes in use not due to an affirmative agency action) in the number of hours reduced. Please indicate this information in the attached chart.

Q4. OMB's Falsely-Claimed Paperwork Reduction Accomplishments

a. In an appendix to this year's Information Collection Budget (ICB) report to Congress, OMB admits at least 710 violations of the PRA; last year OMB reported 872 violations. What is OMB's estimate for the total number of hours of paperwork associated with the violations last year and this year -- paperwork unlawfully imposed on the public without valid OMB PRA approval? Please provide for the hearing record OMB's estimated paperwork hours for each of this year's 710 violations. If OMB is unable to provide this information for any specific violation, please explain the precise circumstances that prevent OMB from estimating the paperwork burden hours caused by the violation.

b. OMB's earlier government-wide paperwork reduction accomplishment estimates for the Clinton-Gore Administration were inflated, erroneously counting as reductions both agency re-estimates of burden and illegal forms in current use. What are OMB's estimates for the "corrected" government-wide paperwork burden in FY 1996, 1997, 1998 and 1999 -- i.e., corrected to no longer count violations of law and adjustments as program changes?

c. When OMB established its paperwork accounting system, OMB made annual adjustments to the paperwork hours base, a practice that discouraged the false counting of re-estimates or illegal burdens as reductions. When did OMB change its accounting system approach to no longer make annual adjustments and why did it do so?

Q5. Sanctions for Violations for the Paperwork Reduction Act. OMB's just-issued ICB report identifies for each illegal agency information collection the date when its OMB approval, if any, expired. Incredibly, four illegal collections still in use date from 1978 to 1989, i.e., from 11 to 22 years ago. For example, the State Department's "Statement of Non-Receipt of Passport" dates back to 1978. Should Congress consider sanctions for agency policy officials who knowingly and repeatedly violate the PRA or who do not promptly correct violations of law? If not, what does OMB recommend?

Q6. OMB's Absence of Crosscutting Impacts Analyses.

a. Small Businesses. Since OMB's standard form *[OMB 83-I]* for agencies to request PRA approval includes a question if small entities will be burdened *[#5]* (in other words, since this information is readily available to OMB), has OMB prepared a crosscutting

analysis of paperwork burdens on small businesses? If not, why not? And, what specific paperwork reduction candidates is the Clinton Administration pursuing for small businesses?

b. State and Local Governments. Since OMB's standard form *[OMB 83-I]* for agencies to request PRA approval includes a question if State and local governments will be burdened *[#11f]* (in other words, since this information is readily available to OMB), has OMB prepared a crosscutting analysis of paperwork burdens on this sector? If not, why not? And, what specific paperwork reduction candidates is the Clinton Administration pursuing for State and local governments?

Q7. Regulatory Compliance Paperwork. What proportion of all paperwork imposed is for regulatory compliance *[OMB 83-I, question #15g]*? What specific paperwork reduction candidates is the Clinton Administration pursuing to reduce regulatory compliance burdens on the public? in Labor? in Transportation? in EPA? in the FTC?

60 Most Burdensome Federal Reporting Requirements: OMB's March 3, 2000 Inventory
(each imposing more than 10,000,000 hours & in rank order)

Burden Hours	Agency	Paperwork Title	Agency Form No.	Date of Last Substantive Revision	No. of Burden Hours Reduced
1,407,159,909	Treas./IRS	US Individual Income Tax Returns	1040		
1,121,260,697	Treas./IRS	US Partnership Return of Income, etc.	1065		
480,611,258	Treas./IRS	US Corporation Income Tax Return for a Personal Service Corporation (PSC), etc.			
466,602,460	Treas./IRS	US Income Tax Return for an S Corporation			
342,445,121	Treas./IRS	US Income Tax Return for Estates & Trusts	1041		
315,006,691	Treas./IRS	Employer's Quarterly Federal Tax Return	941		
298,367,500	Treas./IRS	Depreciation & Amortization	4562		
252,727,147	Treas./IRS	US Individual Income Tax Returns	1040A		
116,007,429	Treas./IRS	Employee's Withholding Allowance	W-4		
105,621,392	Treas./IRS	Estimated Tax for Individuals	1040-ES		
83,462,111	Treas./IRS	Sales of Business Property	4797		
79,045,232	DOL/OSHA	Process Safety Management (PSM) of Highly Hazardous Chemicals			
69,927,555	Treas./IRS	Third-Party Disclosure Requirements			

Burden Hours	Agency	Paperwork Title	Agency Form No.	Date of Last Substantive Revision	No. of Burden Hours Reduced
57,169,160	DOT/FHWA	Controlled Substances & Alcohol Use & Testing			
54,979,533	Treas./IRS	Interest Income	1099-INT		
52,628,400	Defense	Acquisition Management			
44,100,662	HHS/HCFA	Medicare/Medicaid Health Insurance Claims	1500, etc.		
42,418,697	Treas./IRS	Income Tax Return for Single & Joint Filers with No Dependents	1040EZ		
37,922,688	Treas./IRS	Taxation of Fringe Benefits			
36,322,800	Treas./IRS	Employee's Report of Tips to Employer	4070		
36,114,302	Treas./IRS	Certificate of Foreign Status of Beneficial Owner for US Tax Withholding, etc.			
32,481,414	Treas./IRS	US Corporation, Short-Form Income Tax	1120-A		
32,075,163	Treas./IRS	Employer's Annual Federal Unemployment (FUTA) Tax Return	940-EZ		
30,273,950	Treas./IRS	Records in General, under FICA, etc.			
29,402,969	Treas./IRS	Proceeds from Broker & Barter Exchanges	1099-B		
29,099,759	Treas./IRS	Dividends & Distributions	1099-DIV		
28,452,600	DOT/FHWA	Inspection, Repair, & Maintenance			

Burden Hours	Agency	Paperwork Title	Agency Form No.	Date of Last Substantive Revision	No. of Burden Hours Reduced
27,704,510	Treas./IRS	Annual Return/Report of Employee Benefit Plan, etc.			
26,761,200	Commerce	US Census 2000			
26,300,000	SEC	Records by Registered Investment Cos., etc.			
24,720,000	Treas./IRS	Withholding Certificate for Pension or Annuity Payments	W-4P		
23,986,320	Defense	Acquisition Solicitation			
21,660,000	Treas./IRS	Passive Activity Loss Limitations	8582		
20,761,187	Treas./IRS	Underpayment of Estimated Tax by Corporations	2220		
20,473,000	FTC	Truth in Lending			
19,736,544	Treas./IRS	Employer's Annual Federal Unemployment (FUTA) Tax Return	940		
19,404,319	Treas./IRS	Heavy Vehicle Use Tax Return	2290		
18,000,000	State/INS	Application for Immigrant Visa & Alien Registration	OF-230		
17,888,923	HHS/HCFA	Clinical Laboratory Improvement Amendments			

Burden Hours	Agency	Paperwork Title	Agency Form No.	Date of Last Substantive Revision	No. of Burden Hours Reduced
17,240,565	HHS/FDA	Investigational New Drug (IND) Regulations	1571, 1572		
16,955,465	Treas./IRS	Distributions from Pensions, Annuities, etc.	1099-R		
16,852,933	Treas./IRS	Miscellaneous Income	1099-MISC		
15,517,264	Treas./IRS	Child & Dependent Care Expenses	2441		
14,284,339	DOT/FHWA	Driver's Record of Duty Status			
13,701,349	DOL/ESA	OFCCP Recordkeeping & Reporting			
13,333,396	EPA/Water	Discharge Monitoring for NPDES			
13,280,000	Treas./IRS	Education Credits, Hope & Lifetime Credits	8863		
13,099,985	Treas./IRS	IRA Contribution Information	5498		
13,020,000	Justice/INS	Employment Eligibility Verification	I-9		
12,000,000	FTC	Fair Packaging & Labeling Act Regulation			
11,726,328	Treas./IRS	Certain Government Qualified State Tuition Program Payments	1099-G		
11,579,711	Treasury	Financial Recordkeeping & Reporting of Currency & Foreign Financial Accounts			

Burden Hours	Agency	Paperwork Title	Agency Form No.	Date of Last Substantive Revision	No. of Burden Hours Reduced
10,800,000	SEC	Confirmation of Securities Transactions			
10,744,188	Treas./IRS	Estimated Tax for Corporations	1120-W		
10,533,968	Treas./IRS	Return of Private Foundation or Nonexempt Certain Excise Taxes on Charities			
10,457,200	Treas./IRS	Application for Determination of Employee Benefit Plan			
10,400,000	Treas./IRS	Expenses for Business Use of Your Home	8829		
10,369,761	Treas./IRS	Amended US Individual Income Tax Return	1040X		
10,128,562	Education	Federal Family Education Loan (FEEL) Program			
10,101,684	procurement	Cost or Pricing Data Exemption Information			

Recd 6/13/00

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

June 12, 2000

The Honorable David M. McIntosh
Chairman, Subcommittee on National Economic Growth
Natural Resources, and Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

Thank you for your letter of April 14, 2000, enclosing additional questions from the Subcommittee as a follow-up to your April 12, 2000 hearing on the Paperwork Reduction Act. Our response is enclosed.

If you would like any additional information, please contact us at your convenience.

Sincerely,

Jacob J. Lew
Director

Enclosures

cc: The Honorable Dan Burton
The Honorable Dennis Kucinich

SUBCOMMITTEE NOTE: COMPLETE SET OF ENCLOSURES ON FILE IN SUBCOMMITTEE OFFICE

FOLLOW-UP QUESTIONS AND ANSWERS FOR
PAPERWORK REDUCTION ACT HEARING
April 12, 2000

Q1. *a. On December 6, 1999, the Subcommittee asked 28 departments and agencies to identify any specific paperwork reduction candidates added by the Office of Management and Budget (OMB) during a six-month period in 1999 (from July 1st to December 31st). The agencies reported **no** candidates added by OMB from the 7,563 possibilities. Why should Congress continue to fund OMB's Office of Information and Regulatory Affairs (OIRA), which was established by the Paperwork Reduction Act (PRA) of 1980?*

Answer: OIRA was established as a statutory office under the Paperwork Reduction Act of 1980 (1980 PRA) (P.L. 96-511). The 1980 PRA was recodified in the Paperwork Reduction Act of 1995 (P.L. 104-13). The 1995 PRA places primary responsibility for compliance with both the procedures and goals of the Act with the head of each agency (to be delegated to the Chief Information Officer (CIO) of the agency). In fact, the long title of the 1995 PRA is "A bill to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes." As Senator Nunn said upon introduction of the bill in the Senate, "This legislation reemphasizes the fundamental responsibilities of each Federal agency to minimize new paperwork burden by thoroughly reviewing each proposed collection of information for need and practical utility, the Act's fundamental standards. The bill makes explicit the responsibility of each Federal agency to conduct this review itself, before submitting the proposed collection of information for public comment and clearance by OIRA."

The response of the 28 agencies must be understood in the context of the 1995 PRA. OIRA is responsible for exercising oversight of agency information collection requests under the 1995 PRA. When an agency performs its duties well, independently reviewing whether the collection meets the standards of the Act, there is less need for OMB to question its decisions.

Even so, in the course of reviewing agency paperwork clearance requests, OIRA staff will offer suggestions on how the draft information collections can be improved. If, in the course of these reviews, OIRA staff become aware of more systemic issues, the OIRA staff may offer to work with the Office of the Chief Information Officer (CIO) directly to offer training or other support to have the CIO make improvements in the information collections. Such ongoing support underscores the fact that OIRA is performing the role intended by the authors of the 1995 PRA, to reemphasize each agency's own processes, reinforce the authority of the CIOs, and oversee each agency's Information Resources

Management (IRM). OIRA's close working relationship with the agencies often improves the quality of individual paperwork clearance requests.

OIRA also works closely with agencies as they develop significant agency rulemakings. Under Executive Order No. 12866, OIRA has specific responsibilities in regulatory planning, coordination, and review to ensure consistency with the Administration's regulatory philosophy and principles. In its reviews of draft regulations, OIRA seeks to promote Federal regulatory policies that maximize net social benefits and take into account effects on the private and public sectors. The basic objectives of OIRA's regulatory review activities are to increase the value of information provided by agencies on the economic impacts of regulatory policies, improve the quality of agencies' analytic basis for regulatory decisions, and better inform decisionmakers and the public. For economically significant regulations (those that are estimated to impose at least $100 million in costs, benefits, and/or transfers), OIRA works with agencies to obtain the best estimates of net benefits for the agency action, as well as for any reasonable alternatives. For other significant regulations, OIRA ensures that agencies identify and justify the alternative that maximizes net benefits and, where appropriate, identifies and discusses any other reasonable alternatives considered.

OIRA makes other important contributions as well. Under the PRA, OIRA has the statutory lead on numerous other aspects of IRM, including setting policy and overseeing agency implementation in the areas of information dissemination, statistical policy and coordination, records management; privacy and security, and information technology. It performs well in these areas.

OIRA also carries out responsibilities under other statutes:

- The Unfunded Mandates Reform Act of 1995: Title II of this Act requires that each agency, before promulgating any proposed or final rule that may result in expenditures of more than $100,000,000 in any year by State, local, and tribal governments, or by the private sector, must conduct a detailed cost-benefit analysis and select the least costly, most cost-effective or least burdensome alternative. Each agency must also seek input from State, local, and tribal government. OIRA monitors agency compliance with Title II, provides CBO with periodic submissions of agency analytical statements for covered regulations, and publishes an annual report on agency compliance with Title II.

- The Clinger-Cohen Act of 1996 (ITMRA): This Act requires OMB to develop government-wide policy and guidance to assist and oversee agencies in implementing the Act. OMB must: (1) examine agency capital

investment proposals for information technology; (2) oversee the establishment and evaluate the effectiveness of agency CIOs; and (3) oversee multi-agency and government-wide procurement programs for information technology. The Act directs OMB to report annually on the benefits of Federal information technology investments. As part of its oversight under the Act, OMB coordinates the work of the Information Technology Resources Board and similar groups to assist agencies in evaluating and improving major information technology systems investments; promotes the effective use of information technology across agency lines in order to reduce costs and improve government effectiveness and customer service; and supports the CIO Council. In carrying out these responsibilities, OMB has issued guidance to agencies. It assists the CIO Council in producing its strategic plan, continues to support a variety of other interagency groups, and has evaluated single and multi-agency information system investment proposals using its budget oversight processes.

- The National Technology Transfer and Advancement Act of 1995: Under the National Technology Transfer Act Amendments of 1996 (P.L. 104-113), all Federal agencies must use voluntary consensus standards in their procurement and regulatory activities. A Federal agency may elect to use a government-unique standard in lieu of a voluntary consensus standard if the head of each such agency or department transmits an explanation to OMB. To implement the law, OMB issued revisions to Circular A-119. During its regulatory review process, OIRA works with agencies to identify situations where they should rely on voluntary consensus standards rather than developing a government-unique standard.

- Prepare and Submit an Accounting Statement and Report to Congress on the Costs and Benefits of Federal Rules and Paperwork: In the report, OMB/OIRA estimates the total annual costs and benefits (including quantifiable and nonquantifiable effects) of Federal rules and paperwork, in the aggregate, by agency and agency program, and by major rule. OMB also analyzes the impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth and to make recommendations for reform. The report is subject to notice and comment by the public before it is submitted to Congress. In addition, OMB must issue guidelines to agencies to standardize measures of costs and benefits and the format of the accounting statements. The reports and the guidelines are subject to peer review before submission to Congress.

- Government Paperwork Elimination Act - Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (P.L. 105-277):

OMB, in consultation with the Department of Commerce and other appropriate bodies, must develop procedures for the use and acceptance of electronic signatures by Federal agencies within 18 months of enactment. The procedures must:

- be compatible with accepted standards;
- not inappropriately favor one industry or technology;
- ensure an appropriate level of reliability;
- provide for electronic acknowledgments; and
- allow multiple signature methods for large-volume filings.

To accomplish this, OMB/OIRA has developed guidance for dissemination to the agencies. Within 5 years, agencies must have electronic filing, recordkeeping, disclosure, and signature capabilities in place. In consultation with the Department of Commerce, OMB will be responsible for ongoing monitoring of the use of electronic signatures for paperwork reduction and electronic commerce and will report periodically on the agencies' efforts.

- Regulatory Flexibility Act Amendments: The Regulatory Flexibility Act was amended in 1996 by the Small Business Regulatory Enforcement Fairness Act. Under the Act, EPA and OSHA must convene a review panel for major rules prior to their formal proposal. The review panel consists of the agency, SBA, and OIRA and is charged with soliciting input from small business owners on the proposed rule. The panel produces a report outlining its analysis of and recommendations for minimizing or eliminating the small business impacts. OIRA participates actively in a number of such panels each year.

- Congressional Review of Agency Rulemaking: The Congressional Review Act directs Federal agencies to submit all final rules to Congress before they take effect. Before they do so, OIRA determines whether or not regulations meet the statute's definition of "major." The Congressional Review Act imposes certain procedural requirements when an agency submits a final rule that has been designated by OMB as major. OMB has issued guidance to agencies on transmitting final rules to Congress and has developed a standard reporting form for this purpose.

b. On December 6, 1999, the Subcommittee asked 28 agencies to identify any substantive changes in agency PRA submissions made by OMB during the same six-month period in 1999. The Subcommittee analyzed the agency replies by reviewing OMB's actual PRA dockets. The result was that OMB only made three substantive changes, which resulted in a trivial amount of burden reductions -- a mere 1,915 hours. Why has OIRA during the Clinton Administration taken such a passive role in stopping burdensome paperwork proposals which exceed specific statutory prescriptions? Again, why should Congress continue to fund OMB's OIRA, which was established by the PRA of 1980?

Answer: As stated above, OMB works closely with the agencies, often prior to the formal review and approval of information collections under the PRA. The PRA grants OIRA authority to review paperwork clearance requests based upon their individual merits. As OIRA stated in the Information Collection Budget of the United States Government, FY 1999:

> The 1995 PRA in its core paperwork-review provisions recognizes that, for a burden reduction target to be "practicable," the target must be consistent with the ability of agencies to carry out their statutory and program responsibilities. While an underlying goal of the 1995 PRA is to minimize Federal paperwork burden on the public it also affirms the importance of information to the successful completion of agency missions and charges OMB with the responsibility of weighing the burdens of information collection on the public against the practical utility it will have for the agency. Specifically, the 1995 PRA provides that "[b]efore approving a proposed collection of information, the [OMB] Director shall determine whether the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility." (FY 1999 ICB, p. 22)

The OIRA review involves more than simply evaluating whether the draft information collection is needed, has practical utility, and imposes minimum burdens on the respondent. OIRA review of proposed surveys, for example, often involves an evaluation of the statistical methodology that the agency proposes to us to ensure that the responses will be statistically valid. For collections of information that are subject to the Privacy Act, OIRA reviews the required privacy notices to ensure that they are appropriate for the data request involved. OIRA staff also consider whether or not a data request would be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond. In all reviews, OIRA staff emphasize the need for data requests to be written using

plain, coherent, and unambiguous terminology and be understandable to respondents.

If an information collection that an agency submits for OMB review meets the practical utility and burden criteria under the PRA, as well as the other standards set forth in the PRA, then OMB will approve it in accordance with the PRA, notwithstanding the effect of this collection on overall burden reduction targets. This is consistent with the direction given to OMB by the 1995 PRA.

In view of OIRA's many important contributions, we believe that Congress should continue to fund OMB's OIRA.

c. Since President Clinton's regulatory reviews Executive Order 12866 specifies certain disclosure requirements for OIRA to follow "to ensure greater openness, accessibility, and accountability in the regulatory review process," including revealing changes made by OMB during the course of OMB's review, why is OIRA resisting the Subcommittee's request to disclose OMB's role in its review of agency paperwork submissions?

Answer: As OIRA has noted in its correspondence with the Committee, OMB believes that "substantive changes" to a collection of information are "made by OMB" only when OIRA disapproves the collection or when the agency withdraws the collection from review. In response to the Committee's request, OIRA has provided the Committee with information about those collections that OIRA has disapproved or that an agency has withdrawn. We do not view changes as being "made by OMB" when an agency, during the course of OIRA review, makes a change to its proposed collection and OIRA approves the revised collection. In such cases, the change is made by the agency, not by OIRA. Throughout the entire history of the PRA, including the Reagan and Bush Administrations, it has never been OIRA's practice to make a case-by-case determination on each such change as to whether the agency or OIRA should be given "credit" for the change. OIRA believes that instituting such a practice now would impair its administration of the PRA.

Q2. *The Internal Revenue Service (IRS) accounts for nearly 80 percent of the total government-wide paperwork burden on the American public. Even after the Subcommittee's April 15, 1999 hearing, on March 24, 2000, OMB replied that it continued to only have one staff member devoted part-time to work with the IRS on burden reduction initiatives and to review IRS paperwork submissions for OMB PRA approval. Why hasn't OMB increased its staffing devoted to IRS paperwork? And, what changes did OMB make in IRS's December 1999 proposed ICB submission to reduce paperwork burden in 2000? If none, why, especially after the Subcommittee's April 15, 1999 hearing and its extensive correspondence with OMB since then?*

Answer: One OIRA policy analyst has staff responsibility for the Department of the Treasury and several other agencies. That individual reviews IRS paperwork, and is assisted by other OIRA officials and staff members when necessary. OMB has not increased OIRA's staffing level for IRS paperwork review because it believes that this level is appropriate given OIRA's overall staffing level and the need to work with all agencies, including Treasury, to balance the practical utility of information collections against the burden imposed. This staffing level for IRS paperwork remains what it was when the Paperwork Reduction Act was first enacted in 1980, and what it was throughout the Reagan and Bush Administrations.

In reviewing Treasury's December 1999 ICB submission, OIRA worked to correct errors in OMB's computerized inventory of Treasury's information collections, some of which were the responsibility of IRS. Based on this review, we revised and published Treasury's FY 1999 burden inventory. OIRA also reviewed Treasury's planned FY 2000 burden changes and determined that the information that Treasury provided accurately reflected its efforts to reduce burden and implement new statutory requirements.

Q3. *Sixty of the most burdensome paperwork requirements - each totaling over 10 million hours of the public's time - equal 85 percent of the total government-wide burden on the public. These 60 include some that are ripe for review and some that have not been reviewed at all during the two Clinton-Gore terms. For example, OMB's docket for the 12th biggest, imposing nearly 80 million hours on the regulated public - Labor's Process Safety Management (PSM) of Highly Hazardous Chemicals - indicates many public complaints with the paperwork and many public recommendations for change. A second example is FDA's Investigational New Drug (IND) Regulations - the 40th biggest, imposing over 17 million hours on the regulated public. OMB's docket shows no changes in paperwork for this FDA requirement during the two Clinton-Gore terms. Which of the 60 are being targeted by OMB for reduction in the rest of the Clinton Administration? Has OMB considered awarding a contract for an analysis of opportunities for reduction in these 60 paperwork requirements? If not, will OMB do so? Please provide for the hearing record the dates of the last substantive revision of each of the top 60 and the number of hours reduced as a result of that revision effort. Please do not include any adjustments (e.g., correction re-estimates of burden or changes in use not due to an affirmative agency action) in the number of hours reduced. Please indicate this information in the attached chart.*

Answer: OMB reviews the 60 most burdensome collections as rigorously as it does all of the other collections it reviews. Under the procedures established by the PRA, OIRA reviews individual paperwork clearance requests from the agencies on a transaction-by-transaction basis. These requests are made whenever an agency wants to create, revise, or extend the OMB approval of an information collection. Many of these requests are made at the end of the three-year approval period when the agency asks that OMB's approval be extended another three years. When a submission is made, OIRA staff apply the PRA criteria to determine whether or not to approve the agency request to conduct or sponsor the collection of information. When a pending collection request imposes a significant burden, OIRA staff pay particular attention to the agency's stated efforts to reduce burden, as well as its justification for the collection and its explanation of why it has "practical utility." We note that, between now and September 30, 2000, eight of the 60 most burdensome collections are due to expire (please see Exhibit 1, enclosed). We expect that the sponsoring agencies will be submitting requests to OMB for extensions of these eight collections, and plan to carefully review them.

We also note that the roundtable dialogue sessions in OMB's Information Initiative have been exploring topics involving several of the top 60 collections. The IRS is conducting roundtables on self-employed tax burden and employment tax burden. The data standards underlying HCFA's proposed Medicare/Medicaid Health Insurance are on the agenda of an interagency information technology

roundtable. The Department of Transportation has agreed to consider listening sessions regarding its proposed drug and alcohol rulemaking and its driver's hours of service rulemaking as part of the initiative.

OMB has no current plans to hire an outside contractor to analyze the 60 most burdensome paperwork requirements to identify opportunities for burden reduction. OMB has established procedures for reviewing all information collections subject to the PRA. It believes that the current level of staff and budget resources devoted to implementing these procedures is adequate and appropriate. These levels are reflected in the President's FY 2001 budget request.

We are providing the information you requested on the last substantive revision of each of the top 60 collections, including the date and the number of hours reduced (please see Exhibit 2, enclosed).

Q4. *a. In an appendix to this year's Information Collection Budget (ICB) report to Congress, OMB admits at least 710 violations of the PRA; last year OMB reported 872 violations. What is OMB's estimate for the total number of hours of paperwork associated with the violations last year and this year -- paperwork unlawfully imposed on the public without valid OMB PRA approval? Please provide for the hearing record OMB's estimated paperwork hours for each of this year's 710 violations. If OMB is unable to provide this information for any specific violation, please explain the precise circumstances that prevent OMB from estimating the paperwork burden hours caused by the violation.*

Answer: In response to this question, we have provided Exhibit 3, enclosed. This exhibit is equivalent to the chart we provided to you before. Basically, it provides the burden estimates for those information collections which were previously approved, and for which the OMB approval lapsed. Specifically, we have included with this response a table listing, for each OMB control number listed in Appendix B of the FY 2000 ICB, the burden hours for the collection as approved at the ends of FY 1998 and FY 1999, and, for reinstatements, as currently approved.

OMB does not have an estimate for the total number of burden hours associated with all of the violations listed in the tables in Appendix B. Some of the violations listed are not on this table because the collection has never been submitted to OMB for approval and thus there exists no information about prior or currently approved burdens in either our docket or computerized database. For one-time collections that were in violation, we do not anticipate ever having this information. For other collections, we will have this information when the collection is submitted for reinstatement of OMB's previous approval.

b. OMB's earlier government-wide paperwork reduction accomplishment estimates for the Clinton-Gore Administration were inflated, erroneously counting as reductions both agency re-estimates of burden and illegal forms in current use. What are OMB's estimates for the "corrected" government-wide paperwork burden in FY 1996, 1997, 1998 and 1999 -- i.e., corrected to no longer count violations of law and adjustments as program changes?

Answer: The information published in the Information Collection Budget of the United States Government, Fiscal Year 1999, for FY 1998 and in the Information Collection Budget of the United States Government, Fiscal Year 2000, for FY 1999 are "corrected" and do not count violations of law or adjustments as program changes.

OMB has not prepared "corrected" figures for FY 1996 or FY 1997, nor has OMB ever prepared such "corrections." As contemplated by the 1995 PRA, its measure

of burden reduction compares the changes each year solely against the previous year's published total. This approach reflects Congressional intent, as expressed in the Conference Report on the 1995 PRA: "The conferees note that the Government-wide paperwork reduction goal is calculated on the basis of a 'baseline' which is the aggregate paperwork burden imposed during the prior fiscal year" (H. Rpt. 104-99).

c. When OMB established its paperwork accounting system, OMB made annual adjustments to the paperwork hours base, a practice that discouraged the false counting of re-estimates or illegal burdens as reductions. When did OMB change its accounting system approach to no longer make annual adjustments and why did it do so?

Answer: Each year since 1981, OMB has published an ICB that estimates the aggregate annual hours expended by respondents in answering Federal information collections during the prior fiscal year and presents the aggregate change in burden expected during the coming fiscal year. The baseline is the total burden of those Federal information collections that are approved by OMB under the PRA as of the beginning of the coming fiscal year (i.e., the fiscal year on which a given ICB is reporting).

To develop the ICB, OMB asks each agency to estimate how much the total burden hours will decrease or increase for that agency during the course of coming fiscal year. OIRA reviews the agency estimates and discusses with agencies possibilities for burden reductions and quality improvements. As part of this review process, OIRA helps agencies correct errors in OMB's computerized inventory of information collections to ensure that the baseline is accurate. After OIRA concludes its review, OMB states, in the ICB, the agency's baseline burden hour total and the agency's burden hour target for the end of the coming fiscal year.

Q5. *OMB's just-issued ICB report identifies for each illegal agency information collection the date when its OMB approval, if any, expired. Incredibly, four illegal collections still in use date from 1978 to 1989, i.e., from 11 to 22 years ago. For example, the State Department's "Statement of Non-Receipt of Passport" dates back to 1978. Should Congress consider sanctions for agency policy officials who knowingly and repeatedly violate the PRA or who do not promptly correct violations of law? If not, what does OMB recommend?*

Answer: We share your concern about the number of agency violations of the PRA. In response to the violations that OMB reported in the FY 99 ICB, OIRA sent agency CIOs a memo on May 4, 1999, requesting that they (1) provide a timetable for resolving reported violation, (2) confirm that recently expired collections were not be used without OMB approval, and (3) describe their procedures for avoiding future violations. In addition, OMB's deputy director sent the members of the President's Management Council a copy of the FY 1999 ICB – pointing out the problem of violations – and a copy of the memorandum to the CIOs.

While we have made some progress since then, more is needed. We do not believe that the suggested sanctions are an appropriate response to PRA violations. Congress has other means of carrying out its oversight of any affected agencies. OMB will continue to use administrative remedies to address this issue.

Q6. *a. Small Businesses. Since OMB's standard form [OMB 83-I] for agencies to request PRA approval includes a question if small entities will be burdened [#5] (in other words, since this information is readily available to OMB), has OMB prepared a crosscutting analysis of paperwork burdens on small businesses? If not, why not? And, what specific paperwork reduction candidates is the Clinton Administration pursuing for small businesses?*

Answer: OMB collects information from agencies on those collections in the active inventory that have a significant impact on small entities. For these collections, agencies respond "Yes" to question 5 of the Form 83-I. Enclosed is a printout generated by our database that provides the OMB numbers, titles, and burden hours of these collections, sorted by agency (see Exhibit 4).

The FY 2000 Information Collection Budget identifies a number of agency initiatives to reduce burdens on small business. For example, many trucking operations are small businesses. The Department of Transportation DOT) and the Department of Labor (DOL) both have required truck drivers to record their driving time. DOT required the drivers to keep driver logs, while DOL required them to use time records. DOT has decided to rely on DOL's time records. It canceled its regulation with respect to drivers who operate within 100 miles of their normal work site, resulting in a 660,000-hour burden reduction. It has published a proposed rulemaking doing the same thing for intrastate drivers operating further than 100 miles from the work site, which would result in an estimated reduction of 28,000,000 hours.

A growing number of electronic tax filing and payment options are available for small businesses. They may file their employment tax deposits under the Electronic Federal Tax Payment System (EFTPS), which received $1.3 trillion in tax deposits in FY 1999. In FY 2000, EFTPS will launch an Internet Web Site to allow on-line enrollment, payment, account research and customer service. Employers may file their quarterly Form 941s by phone or, beginning in FY 2000, electronically from their office computer. Partnerships will began to file Forms 1065 and related Schedule K-1 electronically in March 2000.
Many small businesses have pension plans for their employees and must file ERISA Form 5500 annually. The Department of Labor's Pension Welfare Benefit Administration (PWBA), the IRS, and the Pension Benefit Guaranty Corporation share data from Form 5500. The three agencies have conducted an extensive review of Form 5500 resulting in the elimination of unnecessary data. Form 5500 previously has been filed with the IRS. Beginning with 1999 plan year filings in July 2000, Form 5500 will be filed with PWBA and employers will be able to use EFAST, an interactive filing program developed by PWBA. The new processing system reduces employer burden by incorporating consistency and accuracy checks in the electronic filing software. It streamlines the conversion of filer data

into electronic format and yields more accurate and timely data. PWBA estimates plan administrators will save 560,000 burden hours and $16,351,000 annually. Shipper's Export Declarations (SEDs) are the source for the official U.S. export statistics compiled by the Bureau of the Census. The Department of Commerce has developed an electronic filing system, Automated Export System (AES). DOC conducts extensive marketing to encourage exporters to convert to AES. Paper filing takes about 11 minutes, whereas electronic filing via AES takes only 3 minutes. Significant numbers of exporters are switching from paper to AES.

Several agencies are working on "one-stop shopping" initiatives to reduce burden by using electronic technology to share information across programs and eliminate duplication. In FY 1999 the Foreign Agricultural Service (FAS) launched a Unified Export Strategy (UES), automating its business processes and using the Internet to serve its geographically diverse customers. Thus far, UES and its private sector partners have developed a secure Internet web site and designed special software that allows customers to consolidate 172 different funding requests in 12 export development programs into one comprehensive submission. Customers no longer prepare and submit multiple applications for funding or assistance. The new approach dramatically reduces paperwork by an estimated 11,413 pages annually, saving over 32 staff years at FAX. It also reduces the administrative cost of the FAS programs by over 50%. FAS will continue to improve the system to reduce burden. For example, in FY 2000 FAS will upgrade the software to pre-populate data entry screens so customers will not have to rekey information on new applications unless the data has changed since the customer's last application.

b. State and Local Governments. Since OMB's standard form [OMB 83-I] for agencies to request PRA approval includes a question if State and local governments will be burdened [#11f] (in other words, since this information is readily available to OMB), has OMB prepared a crosscutting analysis of paperwork burdens on this sector? If not, why not? And, what specific paperwork reduction candidates is the Clinton Administration pursuing for State and local governments?

Answer: OMB maintains information about collections in the active inventory that have a significant impact on State and local governments. For these collections, agencies indicate "P" on question 11.f of the Form 83-I. Attached is a printout generated by our computerized database that provides the OMB numbers, titles, and burden hours of these collections, sorted by agency (see Exhibit 5).

As described in the FY 2000 ICB, EPA has taken several steps to reduce the reporting burden of small state and local facilities. For example, EPA's Office of Ground Water and Drinking Water requires water systems to report water quality

data. Respondents may use an electronic template on EPA's web site to fill in the data elements or may forward laboratory results electronically to EPA and avoid the burden of re-keying data. EPA will complete all of the reporting for small systems, further reducing their burden.

In 1999 EPA revised its application and permit requirements and forms for facilities that treat domestic wastewater, and generate, treat, or dispose of sewage sludge under EPA's National Pollutant Discharge Elimination System (NPDES). The new applications and forms reduce the information requirements on small publicly owned treatment works.

The Rural Utilities Service is developing a comprehensive Internet-based system to collect, store, use and disseminate RUS data for its electric and telecommunication customers. It will be ready in FY 2000 to collect operating reports.

Q7. *What proportion of all paperwork imposed is for regulatory compliance [OMB 83-I, question #15g]? What specific paperwork reduction candidates is the Clinton Administration pursuing to reduce regulatory compliance burdens on the public? in Labor? in Transportation? in EPA? in the FTC?*

Answer: According to OIRA's computerized database, of the 7,637 currently active information collections, 4,060 are needed for regulatory compliance. These 4,060 collections account for approximately 95 percent of the total paperwork burden of all active collections. The attached Exhibit 6, generated by our database, provides the OMB numbers, titles, and burden hours of the collections in the active inventory for which the primary purpose is regulatory compliance (agencies indicated "P" on question 15.g of the Form 83-I).

In addition to the examples in the answer to Question 6, there are many other examples of burden reduction concerning collections needed for regulatory compliance described in the FY 2000 ICB.

The Federal Motor Carrier Safety Administration (FMCSA) has engaged in an ambitious streamlining initiative for several years. It plans to complete a zero-based review of its motor carrier regulations in FY 2000 which eliminates or combines many regulatory requirements and information collections, and streamlines most of the rest. FMCSA estimates there will be a 90% burden reduction when it completes the review.

Another multi-year effort scheduled for completion in FY 2000 is EPA's initiative to reform the RCRA program. EPA's Office of Solid Waste and Emergency Response (OSWER) expects to publish a proposed regulation that will improve the efficiency of the hazardous waste manifest system and reduce "real-world" paperwork burden and cost by up to 1,360,000 hours and $78,000,000 annually. EPA also intends to propose a rulemaking in FY 2000 that will reduce RCRA reporting requirements, lengthen periods between facility self-inspections, revise personnel training, streamline land disposal restrictions paperwork, and reduce the data collected by RCRA's biennial report. As proposed, EPA believes that the burden reduction could be 3,300,000 hours.

IRS forms and instructions are responsible for about 80% of the total government burden. The IRS has contracted with Xerox to redesign and simplify tax forms and instructions. For example, for tax year 1999, taxpayers whose only capital gains were from mutual fund distributions

may not need to file Schedule D. Instead gains may be reported directly on Form 1040. The IRS estimates that about 6 million taxpayers will not need to file Schedule D, reducing taxpayer burden by over 1,000,000 hours. Changes in several basic IRS forms (1040, 1040A, 1040EZ, and TeleFile) may be implemented as early as FY 2000, which could have a substantial impact on burden. The availability of electronic reporting reduces burden, even if nothing else in the collection or process changes. For example, the IRS requires employees to report tips to their employers monthly. Most employers now have electronic systems for employees to use to report tips. This has reduced the burden on employees by nearly 65% (16,808,949 burden hours).

The Bureau of Labor Statistics is working to give respondents the option to transmit data electronically by E-mail, Web-based forms, direct transmission from respondent's database, and several prototype systems.

Many agencies are developing "intelligent" software to help customers complete reports. For example, EPA advises us that it is developing interactive, intelligent, user-friendly software called "Toxics Release Inventory Made Easy" (TRI-ME) that will use simple "decision-tree" questions to help facilities determine if they are subject to TRI reporting. The software will calculate releases, complete the forms, serve as a record-keeping device, and provide guidance. It will even check for errors, omissions, and overlooked release sources. EPA estimates that TRI-ME will greatly reduce data quality errors and reduce reporting burden by up to 20% when fully implemented. EPA intends to introduce TRI-ME in FY 2000 with three industries: chemical distributors, petroleum wholesalers, and foundries.

In FY 2000, the Federal Railroad Administration (FRA) plans to amend its Hours of Service Regulation to encourage railroads to collect, maintain and submit hours of service information electronically. FRA believes most railroads will be equipped to do so by December 2001, resulting in a reduction of up to 80% in the time needed for each report and a total annual reduction of about 2,000,000 hours.

June 20, 2000

BY FACSIMILE

The Honorable Jacob J. Lew
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Director Lew:

This letter follows up on the April 12, 2000 hearing of the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, entitled "Reinventing Paperwork?: The Clinton-Gore Administration's Record on Paperwork Reduction," and the Office of Management and Budget's (OMB's) June 12th response to my April 14th post-hearing followup questions.

Question 1c asked OMB why it is resisting my June 9, 1999 request for OMB to disclose its role in its review of agency paperwork submissions, as such disclosure is required by President Clinton's regulatory executive order. OMB's reply to Question 1c perpetuates OMB's illogical and mistaken view that requiring OMB to reveal changes made by OMB during the course of its Paperwork Reduction Act (PRA) reviews "would impair its administration of the PRA." As I noted in my letters of November 22nd, January 14, 2000, March 2nd, and March 27th, revealing changes made by OMB is the only way Congress can hold OMB accountable, especially given the Clinton-Gore Administration's record of non-achievement in reducing paperwork burdens. As a consequence, I repeat my June 9, 1999 request for OMB to begin disclosing the results of its review, as of July 1, 2000.

Question 2 asked OMB why, since the Subcommittee's April 15, 1999 hearing which highlighted the absence of paperwork reduction initiatives by the Internal Revenue Service (IRS), which accounts for nearly 80 percent of the total government-wide paperwork burden on the American people, OMB had not increased its staffing of only one analyst working part-time on IRS paperwork. OMB's reply that "it believes that this level is appropriate given OIRA's staffing level" is neither credible nor acceptable. The PRA was principally intended to "minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and persons resulting from the collection of information by or for the Federal Government" (44 U.S.C. §3501). Question 2

also asked what changes OMB made in IRS's proposed Information Collection Budget (ICB) submission. OMB's reply that it made no substantive changes is also not acceptable. As a result, as Chairman of your Authorizing Committee, I request that OMB immediately increase OMB's staffing devoted to IRS paperwork to at least three full-time analysts.

Question 3 asked OMB about the results of its reviews of the 60 most burdensome paperwork requirements, which equal 85 percent of the total government-wide burden on the public. OMB replied that it "reviews the 60 most burdensome collections as rigorously as it does all of the other collections it reviews." Since the Subcommittee's investigation revealed from the agency replies that OMB had only reduced the 7.3 billion hours of government-wide paperwork burden by a mere 1,915 hours in a 6-month period, OMB's reply is unacceptable.

Question 3 also asked OMB to indicate the number of hours reduced in the last substantive revision of each of these top 60 paperwork burdens. OMB's reply indicated that the last revision only reduced the burden for 11 of 60 and some of the reductions were not significant, e.g., the Defense Department's reduction of only 26,438 hours for a requirement imposing 23,986,320 burden hours. Please provide detailed information on the nature of the changes made for each of the 11 to verify that all 11 decreases were due to program changes instead of adjustments. In Question 3, I asked if OMB is considering awarding a contract for an analysis of opportunities for reduction in the top 60 paperwork requirements. OMB replies that it "has no current plans to hire an outside contractor." Therefore, please indicate the next expected date for substantive revision of each of the 60 and the process OMB will follow for each to ensure maximum burden reductions.

Question 4c asked OMB, "When OMB established its paperwork accounting system, OMB made annual adjustments to the paperwork hours base, a practice that discouraged the false counting of re-estimates or illegal burdens as reductions. When did OMB change its accounting system approach to no longer make annual adjustments and why did it do so?" OMB's reply is totally nonresponsive to this question. Please provide a responsive answer.

Question 6a asked if OMB has prepared a crosscutting analysis of paperwork burdens on small businesses. Instead of providing an analysis, OMB provided a computerized listing of 316 paperwork dockets imposed by 32 agencies, each having a significant impact on small entities. Has OMB analyzed these 316 burdens to identify duplications and ensure maximum burden reductions in them? If not, when will OMB do so? Also, has OMB orchestrated an interagency review of these requirements? If not, will OMB do so?

Question 6b asked if OMB has prepared a crosscutting analysis of paperwork burdens on State and local governments. Instead of providing an analysis, OMB provided a computerized listing of 929 paperwork dockets, each having a significant impact on State and local governments. Question 6b also asked OMB to identify what specific paperwork reduction candidates the Clinton Administration is pursuing for State and local governments. Incredibly, OMB provided only three specific candidates. This is unacceptable. Has OMB met with representatives of State and local elected officials to identify their top priorities for burden reduction from the 929 with significant burden? If so, please indicate the results of these

discussions. If not, please meet with these representatives and promptly report to me on the results of these discussions and OMB's timetable to revise their top priority candidates for burden reductions.

Please hand-deliver the agency's response to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building not later than noon on Wednesday, July 5, 2000. If you have any questions about this request, please call Professional Staff Member Barbara Kahlow on 226-3058. Thank you for your attention to this request.

Sincerely,

David McIntosh

David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs

cc: The Honorable Dan Burton
The Honorable Dennis Kucinich

Rec'd 7/24/00

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

July 19, 2000

The Honorable David M. McIntosh
Chairman, Subcommittee on National Economic Growth
Natural Resources, and Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter of June 20, 2000, in which you ask questions concerning the Office of Management and Budget's (OMB's) June 12, 2000, response to your questions following up on the Subcommittee's April 12, 2000 hearing on the Paperwork Reduction Act (PRA). Below is our response.

In your letter, you request that OMB maintain detailed and complete records of substantive changes made by OMB during our reviews of agency information collection requests under the PRA. As we have explained previously, in response to your prior requests for this type of information, OMB believes that it makes a "substantive change" to a collection of information under the PRA when the Office of Information and Regulatory Affairs (OIRA) disapproves the collection or when the agency withdraws it from OIRA review. Accordingly, in response to your prior requests, we have provided the Subcommittee with information about those collections that OIRA has disapproved or that an agency has withdrawn.

You also requested that OMB immediately increase its staffing devoted to the PRA review of Internal Revenue Service (IRS) collections of information. In considering your request, OMB has taken into account its overall staff resources and its wide range of responsibilities. OMB seeks to allocate staff so as to perform all of these duties in a responsible and effective way. The President's FY 2001 Budget request for OMB reflects a considered judgement of the resources available to OMB in this regard. As we explained in our prior correspondence, OIRA's current staffing level for the review of IRS collections of information is the same as it has been during the entire 20-year history of the PRA. Given the competing demands on OIRA staff, which include those imposed by legislation enacted in recent years (e.g., the 1995 Unfunded Mandates Reform Act, the 1996 Clinger-Cohen Act, the 1998 Government Paperwork Elimination Act, and the appropriations requirements to prepare regulatory accounting reports). OMB presently has no plans to increase the current staffing level for the review of IRS information collections.

SUBCOMMITTEE NOTE: COMPLETE SET OF ENCLOSURES ON FILE IN SUBCOMMITTEE OFFICE

You have asked for detailed information on the nature of the most recent substantive revisions of the 60 information collections that require the greatest number of hours of reporting time. Enclosed are copies of documents from OIRA's docket files that provide additional information about these actions. You also wanted to know the "next expected date for substantive revision" for each of these 60 information collections. OMB does not have this information. Under the PRA, agencies must seek renewal of OMB's approval for a collection of information every three years. Until the agency submits the proposed collection to OIRA for our review, however, we do not know whether the agency will ask us to approve the continued use of the existing collection or whether the agency will ask us to approve the use of a revised collection. At that time, we will also learn what comments the public submitted to the agency about the existing collection (and any proposed revisions) and how the agency has responded to those comments.

To comply with your request for more information concerning OMB's paperwork accounting system, we reviewed the Information Collection Budgets (ICBs) issued since 1981. Based on that review, it appears that OMB has, each year, made adjustments to the paperwork hours base. As the legislative history for the Paperwork Reduction Act of 1995 states: "The Committee anticipates that the burden reduction goals will be measured against existing levels of burden estimated for the time the goals are set" (H. Rept. 104-37, pp. 41-42; S. Rept. 104-8, p. 43). The format that OMB has used to present these data for agency paperwork burden targets for the upcoming fiscal year has changed over time. The ICBs have not described the reasons for adopting these various formats. Attached is a brief overview of the formats OMB has used since 1981.

Finally, you inquired about crosscutting analyses of paperwork burdens imposed on small businesses and on State and local governments. As you know, when agencies submit information collection requests to OIRA, they must indicate if the collection will have a significant impact on particular entities, including small businesses and State and local governments. As part of our review of these information collection requests, we look for redundancy and duplication and work with agencies to maximize burden reduction.

To complement our regular, transaction-based reviews of individual information collections, OMB earlier this year launched its Information Initiative to focus on important crosscutting issues, such as the need for the government to share information horizontally and vertically across programs, agencies, and levels of government, and with the private sector. As part of the Information Initiative, OMB and several Federal agencies have sponsored a number of roundtables that have allowed us to engage representatives of small businesses and State and local governments. These roundtables have brought together key stakeholders who have shared their unique perspectives and experience on how we might advance the important goal of reducing paperwork burden.

The IRS, for example, held two full-day roundtables that addressed issues of particular concern to small businesses. A roundtable on April 27, 2000, examined self-employed tax

burden. The discussion identified different elements of burden and identified what IRS can do to address each element, including the potential of various electronic technologies to decrease the time and costs incurred by the self-employed in preparing and filing their Federal income tax returns. On May 8, IRS and participants discussed the burden faced by small businesses and the self-employed in preparing and filing their Federal employment tax returns. The roundtable covered IRS efforts to streamline the process and the use of information technology to make it easier and faster for taxpayers to submit returns.

The Occupational Safety and Health Administration (OSHA) held a roundtable on April 27, 2000, that discussed how best to certify regulatory compliance. OSHA is considering revoking some or all of the certification records it requires from employers, if doing so would reduce unnecessary paperwork without diminishing employee protection. The roundtable discussed the impact of any revocation on safety, burden, and enforcement. It also explored other paperwork requirements that the agency could eliminate without jeopardizing the safety and health of workers.

The Department of Agriculture (USDA) hosted a roundtable on April 27 to discuss its Service Center Initiative. This is an effort by USDA's county-based agencies (Farm Service Agency, Natural Resources Conservation Service, and Rural Development) to provide one-stop service for farm programs, conservation programs, and rural loans and grants. This effort has encountered a myriad of challenges and difficulties – for example, changing business processes, integrating legacy systems, developing technical standards, and protecting privacy and security – that illustrate the problems faced by many agencies attempting to maximize the benefits of technology in collecting information.

Several other roundtables have also raised issues of interest to small businesses. For example, the Health Care Financing Administration's Roundtables on Provider Enrollment and Certificates of Medical Necessity focused on alleviating reporting burdens in the health care industry. The Department of Transportation and the Department of Health and Human Services also cosponsored Roundtables on Drug and Alcohol Testing, which addressed those agencies' efforts to reduce the paperwork burden imposed on industries that are predominantly small businesses.

On July 7, OMB hosted an Information Technology Roundtable to explore agency efforts to share information they collect with other Federal agencies and with State, local, and private sector partners who may have different missions, commitments, cultures, capacities, budgeting patterns, and information needs. We explored how agencies are partnering at different levels of government and with the private sector to develop strategies to overcome the technical and financial barriers to the multi-use of information. This session discussed efforts to define technologies, data standards, and other tools for interoperability that can facilitate data sharing and integration in a world of diverse customers, systems, and technologies.

The Information Initiative has also been considering the concerns of State and local governments. On July 18, OMB plans to co-sponsor a roundtable with the Federal Emergency Management Agency (FEMA) and the National Partnership for Reinventing Government (NPR) to explore the sharing of spatial data and the opportunities for Federal agencies to partner with States and other Federal agencies to integrate flood plain geographic information systems. Many agencies collect geo-spatial data in the flood plains across America and use it to support their respective missions. The session will explore opportunities presented by technology to share this information, eliminate redundancy, maximize efficiency, improve the quality of the information used to deliver services to the public, and minimize cost. FEMA, EPA, the U.S. Geological Survey, the Fish and Wildlife Service, the Forest Service, the Army Corp of Engineers, other Federal agencies, and the State of North Carolina have all been invited to participate in this roundtable.

OMB is also participating, as part of the Information Initiative, in IRS' Commercial Off the Shelf Single Point Electronic Filing (COTS SPEF) Project. Part of the Simplified Tax and Wage Reporting System (STAWRS) initiative, COTS SPEF is a partnership among the IRS, software developers, payroll service providers, and ten States that is working to eliminate duplicative filing requirements and permit employers to file quarterly State and Federal tax and wage data electronically to one location.

Finally, OIRA's efforts to help implement the Government Paperwork Elimination Act (GPEA) are another way that we are working to reduce burden on small businesses and State and local governments. On May 2, 2000, we published our final guidance to agencies directing them to allow electronic filing by October 2003, using electronic signatures for the full range of government activities and services. This will allow agencies to give small businesses and State and local governments the option (where practicable) of using electronic means to comply with Federal reporting, recordkeeping, and disclosure requirements, including information that employers must file and store about their employees. We plan to continue to work with the agencies during the next three years to complete implementation of GPEA.

Thank you again for your letter. Please let us know if you would like any additional information.

Sincerely,

John T. Spotila

Enclosures

cc: The Honorable Dan Burton
The Honorable Henry Waxman
The Honorable Dennis Kucinich

ICB Formats for Presenting Data on Agency Paperwork Burden Targets

FY 81: "FY 1980 Base; FY 1981 Agency Request; Percent; FY 1981 OMB Allowance; Percent."

FY 82: "FY 1981 Base; FY 1982 Request; FY 1982 Allowance; Percent change FY 1982 allowance from FY 1981 base."

FY 83: "FY 1982 Base; Program Change; Net Change; FY 1983 Allowance." (A footnote explains that "Net change includes program changes as well as 'changes in use' such as increases in the submission of tax forms or applications over which the Government has no control.")

FY 84: "FY 1983 Base; Reduction from Base, [with subheadings–] Program Change [and] Percent Change; FY 1984 New Collections, [with subheadings–] Program Change [and] Percent Change; FY 1983-84 Net change, [with subheadings–] Program Change [and] Percent Change." (This same format was followed for FY 85-89.)

FY 90: "FY 1989 Base; Net Program Changes; Percent Change/s." (This same format was followed for FY 91-95.)

FY 96: "FY 1995 Total Hour Burden; Estimated/Target FY 1996 Total Hour Burden." (This same format was followed to identify agency targets in FY 97-98. These ICBs provided paperwork burden reduction initiatives that included estimated program changes.)

FY 99: "FY 1998 Total Hour Burden; FY 1999 Expected Program Changes; FY 1999 Expected Program Changes (corrected); FY 1999 Expected Adjustments; Expected Total Hour Burden." (Text explained that "The net corrected program change equals the uncorrected program change less the program changes due to expirations and reinstatements from PRA violations." A separate table provided: "FY 1998 Total Hour Burden; FY 1999 Expected Program Changes (Corrected).)

FY 00: "FY 1999 Total Hours Needed; FY 2000 Expected Program Changes; FY 2000 Expected Changes Due to Agency Action; FY 2000 Expected Changes Due to New Statutes; FY 2000 Expected Adjustments; FY 2000 Expected Total Hours Needed." (A separate table provided "FY 1999 Total Hours Needed; FY 2000 Expected Changes Due to Agency Action; FY 2000 Expected Changes Due to New Statutes.")

August 1, 2000

BY FACSIMILE

The Honorable Jacob J. Lew
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Director Lew:

This letter follows up on the April 12, 2000 hearing of the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, entitled "Reinventing Paperwork?: The Clinton-Gore Administration's Record on Paperwork Reduction," and the Office of Management and Budget's (OMB's) June 12th and July 19th responses to my April 14th and June 20th post-hearing followup questions.

Question 1c asked OMB why it is resisting my June 9, 1999 request for OMB to disclose its role in its review of agency paperwork submissions, as such disclosure is required by President Clinton's regulatory executive order. OMB's reply to Question 1c perpetuates OMB's illogical and mistaken view that requiring OMB to reveal changes made by OMB during the course of its Paperwork Reduction Act (PRA) reviews "would impair its administration of the PRA." As I noted in five letters to OMB, revealing changes made by OMB is the only way Congress can hold OMB accountable, especially given the Clinton-Gore Administration's record of non-achievement in reducing paperwork burdens. I do not accept OMB's July 19th refusal to my repeated request for OMB to begin disclosing the results of its reviews, as of July 1, 2000.

Question 2 asked OMB why, since the Subcommittee's April 15, 1999 hearing that highlighted the absence of paperwork reduction initiatives by the Internal Revenue Service (IRS), which accounts for nearly 80 percent of the total government-wide paperwork burden on the American people, OMB had not increased its staffing of only one analyst working part-time on IRS paperwork. I do not accept OMB's July 19th refusal to my June 20th request that OMB immediately increase OMB's staffing devoted to IRS paperwork to at least three full-time analysts.

Question 3 asked OMB about the results of its reviews of the 60 most burdensome paperwork requirements, which equal 85 percent of the total government-wide burden on the

public. OMB's July 19th refusal to indicate the next expected date for substantive revision of each of the 60 and the process OMB will follow for each to ensure maximum burden reductions is unacceptable. I urge OMB to rethink its refusal.

Questions 6a and 6b asked if OMB has prepared a crosscutting analysis of paperwork burdens on small businesses and a crosscutting analysis of paperwork burdens on State and local governments. OMB's July 19th letter was nonresponsive on this topic. Roundtables are not a substitute for governmentwide crosscutting analyses. I urge OMB to conduct these needed analyses.

If you have any questions about this request, please call Professional Staff Member Barbara Kahlow on 226-3058. Thank you for your attention to this request.

Sincerely,

David McIntosh

David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs

cc: The Honorable Dan Burton
The Honorable Dennis Kucinich

CORRECTED COPY

ONE HUNDRED SIXTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5074
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April 14, 2000

BY FACSIMILE

Mr. Morton Rosenberg
Specialist in American Law
Congressional Research Service
Library of Congress
Washington, D.C. 20540

Dear Mr. Rosenberg:

This letter follows up on the April 12, 2000 hearing of the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, entitled "Reinventing Paperwork?: The Clinton-Gore Administration's Record on Paperwork Reduction." As discussed during the hearing, please respond to the following questions for the record:

Q1. Changes Made by OMB. On page 16 of your written statement, you point out that President Clinton's regulatory reviews Executive Order 12866, "requires that an agency must identify, in the Federal Register notice accompanying the proposed rule, any changes it has made at the suggestion of OIRA." You question why the Administration would voluntarily disclose impact by the Office of Information and Regulatory Affairs (OIRA) in its regulatory reviews but find it "unacceptable" to voluntarily disclose OIRA impact in its paperwork reviews. What options are available to the Subcommittee to get the Office of Management and Budget (OMB) to fully report the results of its paperwork reviews?

Q2. Contempt of Congress and Obstruction of Congressional Oversight. How many other cases are you aware of with multiple examples of agency nonresponsiveness to legitimate Congressional oversight, including subpoena requests for documents and letter requests for specific information? What remedies, if any, did Congress pursue for these instances of contempt of Congress or obstruction of Congressional oversight?

Q3. White House Agencies. During prior Administrations, did any White House agencies, including OMB, exhibit such a pattern of nonresponsiveness to legitimate Congressional oversight requests? If so, please describe each of these instances and their outcomes.

Please hand-deliver the agency's response to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building not later than noon on Friday, April 28, 2000. If you have any questions about this request, please call Professional Staff Member Barbara Kahlow on 226-3058. Thank you for your attention to this request.

Sincerely,

David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs

cc: The Honorable Dan Burton
The Honorable Dennis Kucinich

Congressional Research Service • Library of Congress • Washington, D.C. 20540

Memorandum July 14, 2000

TO : Honorable David M. McIntosh, Chairman
House Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, Committee on Government Reform

FROM : Morton Rosenberg MR
Specialist in American Public Law
American Law Division

SUBJECT : Response to Questions Posed at April 12, 2000 Subcommittee Hearing

---

After our testimony at your Subcommittee's April 12, 2000 hearing entitled "Reinventing Paperwork?": The Clinton-Gore Administration's Record on Paperwork Reduction," you posed three follow-up questions. We respond to them as follows.

Q1. Changes Made By OMB. On page 16 of your written statement, you point out that President Clinton's regulatory review Executive Order 12866, "requires that an agency must identify, in the Federal Register notice accompanying the proposed rule, any changes it has made at the suggestion or OIRA." You question why the Administration would voluntarily disclose impact by the Office of Information and Regulatory Affairs (OIRA) in its regulatory reviews but find it "unacceptable" to voluntarily disclose OIRA impact in its paperwork reviews. What options are available to the Subcommittee to get the Office of Management and Budget (OMB) to fully report the results of its paperwork reviews?

A number of informal and formal options are available to the Subcommittee to ensure that the effectiveness or impact of OIRA reviews of information collection requests (ICR's) becomes publically available. As indicated in our testimony, Executive Order 12,866 currently requires that an agency that has had a proposed rule reviewed by OIRA must "identify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA." Section 6(E)(iii). In the Paperwork Reduction Act, Congress directed the specific procedure by which ICR's contained in proposed rules were to be handled by OIRA: it is to file objections in the Federal Register and when the rule is finalized, the agency must explain in its statement of basis and purpose accompanying the final rule either how it responded to the Director's comments or the reasons the comments were rejected. See 44 U.S.C. 3507 (d)(2). For proposed ICR's that are not contained in rules, "any decision by the Director . . . to disapprove a collection of information, or to instruct the agency to make substantive or material changes to a collection of information, shall be publically available and include an explanation of the reasons for such a decision."

44 U.S.C. 3507 (e)(1)." Despite the general administration and congressional policy of openness with regard to OIRA review of rules and ICR's contained in rules expressed in law and executive order, OMB has made a distinction with respect to ICR's not contained in rules and will not compile or reveal its impact on proposed ICR's unless it rejects an ICR or an agency withdraws its submission.

Several courses of action appear available. It may be suggested to the President that OMB's policy is in conflict with the spirit and letter of openness or OIRA review contained in his Executive Order 12,866, as well as that of the Paperwork Act, and that he should direct the OMB Director, perhaps by executive order, to bring OIRA's ICR administration in conformity with the openness policy that is applicable to other related OIRA review activities. This would be the most expeditious manner of resolving the dispute.

Failing a voluntary response, compliance may be achieved through utilization of the authorization and appropriations processes. OMB's limited interpretation of its reporting obligation may be overruled by a clarifying legislative direction. Such a direction might be buttressed by a reduction in the appropriation of the Office of the OMB Director, which may not be made up by utilizing funds appropriated to any other OMB activity or program, until such time as the openness directive is implemented.

Q2. Contempt of Congress and Obstruction of Congressional Oversight. How many other cases are you aware of with multiple examples of agency nonresponsiveness to legitimate Congressional oversight, including subpoena requests for documents and letter requests for specific information? What remedies, if any, did Congress pursue for these instances of contempt of Congress or obstruction of congressional oversight?

Over the past 20 years congressional committee exercises of oversight and investigatory authority have reinforced the historic understanding of the breadth of this constitutionally-based power. Following are four illustrations (out of many that could be cited) of complex and successful investigations.

Investigation of Withholding of EPA Documents

One of the most prominent cases was the congressional investigation of the Department of Justice that grew out of the highly charged confrontation at the end of the 97th Congress concerning the refusal of Environmental Protection Agency Administrator Ann Gorsuch Burford, under orders from the President, to comply with a House subcommittee subpoena requiring the production of documentation about EPA's enforcement of the hazardous waste cleanup legislation. The Justice Department's Office of Legal Counsel (OLC) took the position that files pertaining to ongoing enforcement activities were too sensitive to release because they contained confidential information regarding evidence and litigation strategy. Congressional subcommittees declined offers of limited access to the documents and issued subpoenas. This dispute culminated in the House of Representative's citation of Burford for contempt of Congress, the first head of an Executive branch agency ever to have been so cited by a House of Congress. It also resulted in the filing of an unprecedented legal action by DOJ, in the name of the United States, against the House of Representatives and a number of its officials to obtain a judicial declaration that Burford had acted lawfully in refusing to comply with the subpoena.

Ultimately, the lawsuit was dismissed, *U.S. v. House of Representatives,* 557 F. Supp. 150 (D.D.C. 1983), all the subpoenaed documents were provided to Congress in their entirety, and the contempt citation was dropped. However, a number of questions about the role of the Department during the controversy remained: whether the Department, not EPA, had made the decision to persuade the President to assert executive privilege; whether the Department had directed the United States Attorney for the District of Columbia not to present the contempt certification of Burford to the grand jury for prosecution and had made the decision to sue the House; and, generally, whether there was a conflict of interest in the Department's simultaneously advising the President, representing Burford, investigating alleged Executive Branch wrongdoing, and enforcing the Congressional criminal contempt statute. These and related questions raised by the Department's actions were the subject of an investigation by the House Judiciary Committee beginning in early 1983. The Committee issued a final report on its investigation in December 1985. See Report of the House Comm. on the Judiciary on Investigation of the Role of the Department of Justice in the Withholding of Environmental Protection Agency Documents from Congress in 1982-1983, H.R. Rep. No. 99-435, 99th Cong., 1st Sess (1985) ("EPA Withholding Report").

Although the Judiciary Committee ultimately was able to obtain access to virtually all of the documentation and other information it sought from the Department, in many respects this investigation proved as contentious as the earlier EPA controversy from which it arose. In its final report, the Committee concluded that:

> [T]he Department of Justice, through many of the same senior officials who were most involved in the EPA controversy, consciously prevented the Judiciary Committee from obtaining information in the Department's possession that was essential to the Committee's inquiry into the Department's role in that controversy. Most notably, the Department deliberately, and without advising the Committee, withheld a massive volume of vital handwritten notes and chronologies for over one year. These materials, which the Department knew came within the Committee's February 1983 document request, contained the bulk of the relevant documentary information about the Department's activities outlined in this report and provided a basis for many of the Committee's findings.

EPA Withholding Report at 1163; *see* also 1234-38. Among the other abuses cited by the committee were the withholding of a number of other relevant documents until the committee had independently learned of their existence, *id.* at 1164, as well as materially "false and misleading" testimony before the committee by the head of the Department's Office of Legal Counsel, *id.* at 1164-65 & 1191-1231.

The committee's initial request for documentation was contained in a February 1983 letter from its chairman, Peter Rodino, to Attorney General William French Smith. The Committee requested the Department to "supply all documents prepared by or in the possession of the Department in any way relating to the withholding of documents that Congressional committees have subpoenaed from the EPA." *Id.* at 1167 & 1182-83. The letter also specifically requested, among other things, a narrative description of the activities of each division or other unit of the Department relating to the withholding of the EPA materials, information about the Department's apparent conflict of interest in simultaneously

advising the Executive branch while being responsible for prosecuting the Burford contempt citation, and any instructions given by the Department to the United States Attorney for the District of Columbia not to present the Burford contempt to the grand jury.

At first the Department provided only publicly available documents in response to this and other document requests of the committee. *Id.* at 1184. However, after a series of meetings between committee staff and senior Department officials, an agreement was reached whereby committee staff were permitted to review the materials responsive to these requests at the Department to determine which documents the committee would need for its inquiry. *Id.* at 1168 & 1233. Committee staff reviewed thousands of documents from the Land and Natural Resources Division, the Civil Division, the Office of Legal Counsel, the Office of Legislative Affairs, the Office of Legal Counsel, the Office of Legislative Affairs, the Office of Public Affairs, and the offices of the Attorney General, the Deputy Attorney General, and the Solicitor General. *Id.* at 1168.

In July 1983 the committee chairman wrote to the Attorney General requesting copies of 105 documents that committee staff had identified in its review as particularly important to the committee's inquiry. *Id.* at 1169. By May 1984, only a few of those documents had been provided to the committee, and the chairman again wrote to the Attorney General requesting the Department's cooperation in the investigation. In that letter, the chairman advised the Attorney General that the committee's preliminary investigation had raised serious questions of misconduct, including potential criminal misconduct, in the actions of the Department in the withholding of the EPA documents. *Id.* at 1172. The committee finally received all of the 105 documents in July 1984, a full year after it had initially requested access in July 1983. The committee at that time also obtained the written notes and a number of other documents that had been earlier withheld. *Id.* at 1173.

There was also disagreement about the access that would be provided to Department employees for interviews with committee staff. The Department demanded that it be permitted to have one or more Department attorneys present at each interview. The committee feared that the presence of Department representatives might intimidate the Department employees in their interviews and stated that it was willing to permit a Department representative to be present only if the representative was "walled-off" from Department officials involved with the controversy, if the substance of interviews was not revealed to subsequent interviewees, and if employees could be interviewed without a Department representative present if so requested. The Department ultimately agreed to permit the interviews to go forward without its attorneys present. If a Department employee requested representation, the Department employed private counsel for that purpose. In all, committee staff interviewed twenty-six current and former Department employees, including four Assistant Attorney Generals, under this agreement. *Id.* at 1174-76.

Partly as a result of these interviews, as well as from information in the handwritten notes that had been initially withheld, the Committee concluded that it also required access to Criminal Division documents concerning the origins of the criminal investigation of former EPA Assistant Administrator Rita Lavelle in order to determine if the Department had considered instituting the investigation to obstruct the committee's inquiry. The Committee also requested information about the Department's earlier withholding of the handwritten notes and other documents to determine whether Department officials had deliberately withheld the documents in an attempt to obstruct the committee's investigation. *Id.* at 1176-77 & 1263-64. The Department at first refused to provide the committee with documents

relating to its Lavelle investigation "[c]onsistent with the longstanding practice of the Department" not to provide "access to active criminal files." *Id.* at 1265. The Department also refused to provide the committee with access to documentation related to the Department's handling of the committee's inquiry, objecting to the committee's "ever-broadening scope of ... inquiry." *Id.* at 1265.

The committee chairman wrote the Attorney General and objected that the Department was denying the Committee access even though no claim of executive privilege had been asserted. *Id.* at 1266. The Chairman also maintained that "[i]n this case, of course, no claim of executive privilege could lie because of the interest of the committee in determining whether the documents contain evidence of misconduct by executive branch officials." *Id.* With respect to the documents relating to the Department's handling of the Committee inquiry, the chairman demanded that the Department prepare a detailed index of the withheld documents, including the title, date, and length of each document, its author and all who had seen it, a summary of its contents, an explanation of why it was being withheld, and a certification that the Department intended to recommend to the President the assertion of executive privilege as to each withheld document and that each document contained no evidence of misconduct. *Id.* at 1268-69. With respect to the Lavelle documents, the Chairman narrowed the committee's request to "predicate" documents relating to the opening of the investigation and prosecution of Lavelle, as opposed to FBI and other investigative reports reflecting actual investigative work conducted after the opening of the investigation. *Id.* at 1269-70. In response, after a period of more than three months since the committee's initial request, the Department produced those two categories of materials. *Id.* at 1270.

Rocky Flats Environmental Crimes Plea Bargain

In June 1992 the Subcommittee on Investigations and Oversight of the House Committee on Science, Space, and Technology commenced a review of the plea bargain settlement by the Department of Justice of the government's investigation and prosecution of environmental crimes committed by Rockwell International Corporation in its capacity as manager and operating contractor at the Department of Energy's (DOE) Rocky Flats nuclear weapons facility. See Environmental Crimes at the Rocky Flats Nuclear Weapons Facility: Hearings Before the Subcomm. on Investigations and Oversight of the House Committee on Science, Space and Technology, 102d Cong., 2d Sess., Vols. I and II (1992) ("Rocky Flats Hearings"); Meetings: To Subpoena Appearance by Employees of the Department of Justice And the FBI and To Subpoena Production Of Documents From Rockwell International Corporation, Before the Subcomm. on Investigations and Oversight of the House Comm. on Science, Space, and Technology, 102d Congress, 2d Sess., (1992)("Subpoena Meetings").

The settlement was a culmination of a five-year investigation of environmental crimes at the facility, conducted by a joint government task force involving the FBI, the Department of Justice, the Environmental Protection Agency (EPA), EPA's National Enforcement Investigation Centers, and the DOE Inspector General. The Subcommittee was concerned with the size of the fine agreed to relative to the profits made by the contractor and the damage caused by inappropriate activities; the lack of personal indictments of either Rockwell or DOE personnel despite a DOJ finding that the crimes were "institutional crimes" that "were the result of a culture, substantially encouraged and nurtured by DOE, where

environmental compliance was a much lower priority than the production and recovery of plutonium and the manufacture of nuclear `triggers'"; and that reimbursements provided by the government to Rockwell for expenses in the cases and the contractual arrangements between Rockwell and DOE may have created disincentives for environmental compliance and aggressive prosecution of the case.

The Subcommittee held ten days of hearings, seven in executive session, in which it took testimony from the United States Attorney for the District of Colorado; an assistant U.S. Attorney for the District of Colorado; a DOJ line attorney from Main Justice; and an FBI field agent; and received voluminous FBI field investigative reports and interview summaries, and documents submitted to the grand jury not subject to Rule 6(e). *E.g.,* Rocky Flats Hearing, Vol. I, at 389-1009, 1111-1251; Vol. II.

At one point in the proceedings all the witnesses who were under subpoena, upon written instructions from the Acting Assistant Attorney General, Criminal Division, refused to answer questions concerning internal deliberations in which decisions were made about the investigation and prosecution of Rockwell, the DOE and their employees. Two of the witnesses advised that they had information and, but for the DOJ directive, would have answered the subcommittee's inquiries. Faced with the imminent adjournment of the Congress, the Subcommittee members unanimously authorized the chairman to send a letter to President Bush requesting that he either personally assert executive privilege as the basis for directing the witnesses to withhold the information or direct DOJ to retract its instructions to the witnesses. The President took neither course and the DOJ subsequently reiterated its position that the matter sought would chill Department personnel. The Subcommittee then moved to hold the U.S. Attorney in contempt of Congress.

A last minute agreement forestalled the contempt citation. Under the agreement (1) DOJ issued a new instruction to all personnel under subpoena to answer all questions put to them by the subcommittee, including those which related to internal deliberations with respect to the plea bargain. Those instructions were to apply as well to all Department witnesses, including FBI personnel, who might be called in the future. (2) Transcripts were to be made of all interviews and provided to the witnesses. They were not to be made public except to the extent they needed to be used to refresh the recollection or impeach the testimony of other witnesses called before the subcommittee in a public hearing. (3) Witnesses were to be interviewed by staff under oath. (4) The Subcommittee reserved the right to hold further hearings in the future at which time it could call other Department witnesses who would be instructed not to invoke the deliberative process privilege as a reason for not answering subcommittee questions. Rocky Flats Hearings, Vol. I at 9-10, 25-31, 1673-1737; Subpoena Hearings, at 1-3, 82-86, 143-51.

Investigation of the Justice Department's Environmental Crimes Section

From 1992 to 1994, the House Commerce Committee's Subcommittee on Oversight and Investigations conducted an extensive investigation into the impact of the Department of Justice (DOJ) on the effectiveness of the Environmental Protection Agency's (EPA) criminal enforcement program. The probe involved two public hearings, nearly three years of staff work, intensive review of documents (many of which were obtained only though subpoenas), and the effort to overcome persistent Department resistence. The investigation

focused on allegations of mismanagement of the Environmental Crimes Section (ECS), the DOJ Headquarters component charged with environmental prosecution responsibilities, and the effect on the relationship between U.S. Attorneys' offices and the ECS as a consequence of Main Justice's decision to centralize control of environmental prosecution in Washington, D.C. at the very same time that all other areas of prosecution control were being decentralized.

The Subcommittee's investigations was delayed for months by DOJ refusals of requests to interview DOJ line attorneys and the denial of access to numerous primary decisionmaking documents as well as documents prepared in response to the Subcommittee's investigation. The initial phase of the investigation required overcoming refusals to produce internal EPA documents bearing on 17 closed criminal environmental cases. The documents ultimately produced by EPA included Reports of Investigation, case agent notes, internal reports and memoranda, communications with private parties, and correspondence with DOJ. The next phase concentrated on attempts to obtain staff interviews with DOJ line attorneys with first hand information on whether various closed cases had been mishandled, including three Assistant United States Attorneys. DOJ officials initially refused on the ground of the chilling effect such access would have and the historic reluctance of the Department to allow such access, offering instead to provide access to the head of ECS instead. The Subcommittee responded that it was premature to interview the ECS head without interviewing line attorneys who had first hand knowledge of the facts in question. The change of administration in 1993 did not result in an easing of DOJ's resistant posture and in May 1993 the Subcommittee voted to issue 26 subpoenas to present and former DOJ attorneys. In June 1993 DOJ acquiesced to staff interviews of the subpoenaed attorneys pursuant to a negotiated agreement. Document subpoenas were also authorized but not issued. However, continued refusal to voluntarily produce the documents resulted in their issuance and service in March 1994 on the Attorney General and the Acting Assistant Attorney General for the Environment and Natural Resources Division. Some of these documents involved closed cases, but DOJ claimed they were "deliberative" in nature and that only limited access could be allowed for them. Other documents withheld involved internal DOJ communications respecting responses to the Subcommittee's investigation after the six cases were closed. At the time the subpoenas were served the Acting Assistant Attorney General's nomination for the position was before the Senate Judiciary committee. The Chairman of the Subcommittee advised the Judiciary Committee of the withholding and a hold was put on her nomination. In late March DOJ agreed to comply with the subpoena and the documents were provided over a period of months. Coincidentally the Senate hold was lifted.

The major results of the investigation and its revelations were the reversal of the policy of centralization of control of environmental prosecutions in Washington, D.C., and the return of such control to the U.S. Attorney's offices; and the replacement of the top management of the ECS. See "Damaging Disarray: Organizational Breakdown and Reform in the Justice Department's Environmental Crimes Program," 103d Cong., 2d Sess. 1-4, 10-40 (1994)(Comm. Print #103-T).

Investigation of the White House Travel Office Firings (Travelgate)

Following the May 19, 1993, firing of seven White House Travel Office employees, allegations of a variety of improprieties by White House personnel and persons with White

House connections, including improper importunings of the Federal Bureau of Investigation and the Internal Revenue Service leading to and following after the dismissals surfaced and set in motion a number of investigations by, among others, the White House, the General Accounting Office, the Justice Department, Office of Independent Counsel, and several congressional committees. Five reports were issued which, according to the soon-to-be Chairman of the House Government Reform and Oversight Committee, Bill Clinger, raised more questions than were answered. Upon assuming the chairmanship in January 1994, he began a formal investigation with interviews and document requests. The first hearing was held in October 1995 from which the Committee concluded that none of the reports adequately addressed the issues of improprieties, and that the GAO and Justice Department's Office of Public Integrity investigations "were hobbled by . . . an unprecedented lack of cooperation by the White House in their investigations." In September 1995 the Committee made document requests to the White House Counsel's Office, which declared in October 1995 that it had substantially complied with the requests. In January 1996 the White House produced a memo by a White House official, David Watkins, that was covered by the Committee's September 1995 document request. The document was said to have been overlooked. On January 11, 1996, the Committee issued subpoenas for all relevant records on the matter to the White House Executive Office of the President and the office of Administration as well to individual White House officials and employees. Following further hearings, the GAO, after consultation with Chairman Clinger, asked the Justice Department to investigate possible false statements made by David Watkins to GAO, which was in turn referred to the Independent Counsel. Interrogatories were issued to the First Lady with respect to her role in the firings which were responded to. A March 1996 production of documents contained a letter from Watkins to the First Lady dated May 3, 1994, which had not been produced by earlier requests. A response to a personal subpoena to a White House employee revealed a February 15, 1996 memo from White House Counsel John M. Quinn to all witnesses served with subpoenas by the Committee directing them to clear all responses with his office.

On May 2, 1996 the Committee notified Quinn (who was custodian of White House records) Watkins, and Matthew Moore (a White House aide) that they were not in compliance with the Committee's January 11 subpoena and were subject to being held in contempt. In response Quinn provided the Committee with a broad categorization of the documents being withheld on May 3, 1996. The memo also raised implications that the documents might be covered by executive privilege, although no privilege was asserted. The Committee set a deadline of May 8 for compliance and scheduled a Committee meeting for May 9 for a vote on contempt resolutions. On May 7 counsel for Watkins and Matthews asserted claims of attorney-client and work product privilege as grounds for their noncompliance. On the morning of May 9 Quinn advised the Chairman that the Attorney General had informed the President that executive privilege might be asserted as to all the withheld documents and that the President had directed him to invoke executive privilege "as a protective matter." The Committee voted contempt resolutions against Quinn, Watkins and Matthews. Prior to submission of the Committee's report for a floor vote, Quinn released all the withheld documents. For a richly detailed account of the Committee's investigation, see Proceedings Against John M. Quinn, David Watkins and Matthew Moore (Pursuant to Title 2, United States Code, Section 192 and 194), H. Rept. No. 104-498, 104th Cong., 2d Sess. (1996).

Q3. White House Agencies. During prior Administrations, did any White House agencies, including OMB, exhibit such a pattern of nonresponsiveness to legitimate Congressional oversight requests? If so, please describe each of these instances and their outcomes.

Between 1981 and 1993, a major issue confronted by the Congress, and in particular the House Committees on Energy and Commerce and Government Operations, was the legal propriety and impact of the Office of Management and Budget's (OMB) administration of Executive Orders 12,291 and 12,498, which established OMB as the central clearinghouse for rules promulgated by all executive departments and agencies. Throughout the period the House committees held numerous investigative hearings on alleged interference by OMB on agency policymaking at the Environmental Protection Agency, the Food and Drug Administration, and the Occupational Health and Safety Administration, among others. See, *e.g.*, Role of OMB in Regulation, Hearing Before the Subcommittee on Oversight and Investigation of the House Committee on Energy and Commerce, 97th Cong., 1st Sess. (1981); "Infant Formula: The Present Danger," Hearing Before the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce, 97th Cong., 2d Sess. (1982); EPA: "Investigation of Superfund and Agency Abuses (Part 3)," Hearings Before the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce, 98th Cong., 1st Sess. 81 (1983); "Investigation of the EPA: Report on the President's Claim of Executive Privilege Over EPA Document, Abuses in the Superfund Program, and Other Matters" by the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce, 98th Cong., 2d Sess. 285 (1984); "EPA's Asbestos Regulations," Hearing Before the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce, 99th Cong., 1st Sess. 109 (1985); Office of Management and Budget Control of OSHA Rulemaking, Hearings Before a Subcommittee of the House Committee on Government Operations, 97th Cong., 2d Sess. (1982); "The Role of the Council on Competitiveness in Regulatory Review," Hearing before the Senate Comm. On Governmental Affairs, 102d Cong., 1st Sess. (1991); "Is the Office of Management and Budget Interfering With Workers Health and Safety Protection?," Hearing before the Senate Comm. on Governmental Affairs, 102d Cong., 2d Sess. (1992).

Congressional critics of OMB's Administration of the rulemaking review mechanism established by the executive orders claimed that it caused arbitrary delays in agency rulemaking efforts, often forcing agency's to miss statutory deadlines; effected the modification or complete displacement of the technical, scientific and policy judgments of agency officials as a result of OMB pressure; imposed cost-benefit criteria in agency rulemakings in contravention of specific congressional mandates; substituted political considerations for the economic analyses required by E.O. 12,291; allowed undisclosed meetings between OMB officials and affected industry officials during the review process; acted as a conduit for industry views to agency decisionmakers without identification of that fact to the agency recipients; and failed to record OMB input in the public docket of an agency rulemaking that was the subject of review.

The Committee investigations most often had to first focus on the affected agency to gain information on OMB's impact on a rulemaking proceeding. In many instances agencies were eager to supply information, in others there was great reluctance out of fear of retribution. Although subpoenas for documents were often used, documents and information came from agency whistleblowers or through public interest and labor organizations with close contacts with agency sources. After the informational and documentary foundation was

established, OMB and OIRA would be called to explain. The cumulative effect of congressional disclosures of lengthy delays, ex parte and conduit contacts, and apparent displacement of agency authority and expertise, and the application of congressional pressure by means of funding limitations, refusals to confirm nominees for the office of Administrator, statutorily exempting agency's or programs from the regulatory review process, failure to reauthorize OMB programs, and in one instance having five major committee chairmen filing an amicus brief challenging the constitutionality of the executive order program, resulted in gradual amelioration of the perceived faults of the program. In 1986, for example, OMB agreed to publically disclose ex parte contacts with agencies and meetings with non-governmental persons about rules under review. In 1993, President Clinton revoked the Reagan executive order and replaced it with a new order, E.O. 12,866, which emphasized the primacy of the agencies in the rulemaking process and delineated time limits on the length any review process, of a rule and imposed openness requirements on the review including requirements that agencies disclose the changes that had been induced by OMB in a proposed rule, that OMB disclose what rules were under review and how long they had been under review, and that OMB maintain the 1986 disclosure requirements on ex parte and non-governmental contacts. See generally, "Regulatory Management at OMB" in "Office of Management and Budget: Evolving Roles and Future Issues," Senate Comm. on Governmental Affairs, 99th Cong., 2d Sess. 185-233 (1986).

SAMPLE OF LETTER SENT TO 27 OTHER DEPARTMENTS AND AGENCIES

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5074
MINORITY (202) 225–5051
TTY (202) 225–6852

April 14, 2000

BY FACSIMILE
The Honorable Daniel R. Glickman
Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250

Dear Secretary Glickman:

The Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs is continuing its oversight of the Paperwork Reduction Act. Thank you for your replies to the Subcommittee's December 6, 1999 request for information on the role played by the Office of Management and Budget in paperwork reduction.

At our April 12, 2000 hearing, witnesses testified that some burden could be reduced by Congress by amending existing laws. We would like your recommendations for changes in specific laws which impose unnecessary or overly burdensome paperwork and are good candidates for elimination or reduction. Please indicate the statutory citation, your proposed change, and the rationale for your proposal.

Please provide this information to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building not later than Monday, May 15, 2000. If you have any questions about this request, please contact majority Professional Staff Member Barbara Kahlow at 226-3058 or Minority Counsel Elizabeth Mundinger at 225-5051.

Thank you in advance for your attention to this request.

Sincerely,

David M. McIntosh
Chairman
Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs

Dennis Kucinich
Ranking Member
Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs

cc: The Honorable Dan Burton
The Honorable Henry A. Waxman

Rec'd 5/24/00

United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

May 19, 2000

The Honorable David M. McIntosh, Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives
B-377 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear David:

This is in response to your letter of April 14, 2000, requesting the Department of Agriculture's (USDA) recommendations for changes in laws that impose unnecessary or overly burdensome paperwork. USDA staff continue to work to prepare the final response to your letter. Please know that USDA is anxious to provide input into the Subcommittee's work on this issue and we appreciate the opportunity to do so.

So that USDA's recommendations are thorough and include the advice of all USDA agencies, we are soliciting from each agency its particular statutory citations, proposed changes, and rationale for each recommendation. I assure you that we will expedite this process and send you the information you have requested as soon as possible. In the meantime, please do not hesitate to call me, at 720-8833, or have your staff call Chris Moody in USDA's Office of Congressional Relations, at 720-7095, for updates on the status of this project or for answers to any other questions you may have.

I am sending an identical response to Congressman Kucinich, who joined you in sending the April 14 request.

Sincerely,

for Joseph Leo
Chief Information Officer

SUBCOMMITTEE NOTE: USDA NEVER PROVIDED A FOLLOW-UP RESPONSE

UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Legislative and Intergovernmental Affairs
Washington, D.C. 20230

The Honorable David M. McIntosh
Chairman, Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6145

Dear Mr. Chairman:

Thank you for your letter to Secretary Daley seeking the Department of Commerce's recommendations regarding laws imposing paperwork requirements. The Secretary asked that I respond to this inquiry sent pursuant to your continuing oversight under the Paperwork Reduction Act.

The Department of Commerce has long been a leader in advocating and using market-oriented regulatory approaches in lieu of traditional command-and-control regulations when such approaches offer a better alternative. While not principally a regulatory agency, all regulations and paperwork requirements of the Department are designed and implemented to maximize societal benefits while placing the smallest possible burden on those subject to the requirement.

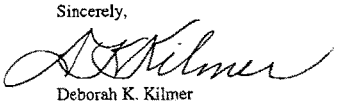
Sometimes, however, the requirements of a particular information collection by the Department are established in statute. For instance, the Department of Commerce's Bureau of Export Administration has responsibility for implementation of the Chemical Weapons Convention. The Convention and its implementing legislation require that chemical manufacturers make declarations concerning their production of certain chemicals that may serve as a precursor to the development of chemical weapons. See, The Chemical Weapons Convention Implementation Act of 1998, 22 U.S.C. 6701 *et seq*. Further, the Census Bureau has legal authority to require information necessary to the production of reports on U.S. economic activity. These reports provide important statistics on all aspects of the economy, and include information on topics such as U.S. gross domestic product, housing starts, and exports. See, Title 13, United States Code. Also, the Commerce Department administers the antidumping and countervailing duties laws. These laws are designed to ensure that imports to the United States are traded fairly in our domestic market. Once a petition alleging a violation of these laws is filed, the Commerce Department must acquire information necessary to make a determination regarding the appropriateness of imposing duties. See, 19 U.S.C. 1671 *et seq*. and 19 U.S.C. 1673 *et seq*.

Each of these functions is based on a statutorily mandated collection of information. We take very seriously the fact that there is a burden on the private sector associated with the submission of this information. However, we believe that these collections of information are critically important, and would not recommend they be rescinded or changed.

The Commerce Department has in the past and will continue in the future to aggressively pursue information management initiatives with the goal of reducing public burden. For instance, in Fiscal Year 1998, the Census Bureau implemented strategies to limit the burden of business reporting for the Economic Census, which is required by law to be conducted every five years. These strategies resulted in a significant reduction in the total time required of the private sector to provide the information (nearly two million hours saved) as compared to the previous Economic Census. Further, the Department is engaged in several initiatives using new Web-based technologies that will yield future burden reductions. By 2003, the U.S. Patent and Trademark Office will process patent applications completely electronically. The Bureau of Export Administration is completing development of the Simplified Network Application Process (SNAP) that will provide exporters the option of filing an Internet-based export license application. Similarly, the National Oceanic and Atmospheric Administration is developing an electronic fish logbook that will allow fishermen to file required catch data electronically.

I hope that this information is helpful in your Committee's role overseeing implementation of the Paperwork Reduction Act.

Sincerely,



Deborah K. Kilmer

OFFICE OF THE SECRETARY OF DEFENSE
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950

ADMINISTRATION AND
MANAGEMENT

RLO 5/12/00
APR 27 [illegible]

Honorable David McIntosh
Chairman, Subcommittee
on National Economic Growth,
Natural Resources and Regulatory Affairs
Committee on Government Reform
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This is in response to your letter of April 14, 2000, to the Secretary of Defense requesting recommendations for changes in specific laws that impose unnecessary or overly burdensome paperwork.

At this time, the Department of Defense does not propose any recommendations or changes to existing laws. Much of the Department's information burden results from the acquisition process. Specifically, over 92 percent of the current total burden is acquisition related. As part of the ongoing Defense Acquisition Reform Initiative, the Department continues to reengineer its acquisition system, and institute reforms that result in major reductions to information requirements imposed on the private sector. Acquisition reform is key to reducing the regulatory burden and related information collection activities that are imposed on Defense contractors. The Department continually reviews its paperwork burden, so that only the minimum burden is imposed on Defense contractors consistent with sound business practices and public law.

Information collection management is centralized within the Department of Defense under the Director of Administration and Management (DA&M) who is also the Regulatory Policy Officer. Since passage of the Paperwork Reduction Act of 1995, the Department has actively managed information collection and paperwork reduction. This proactive approach has resulted in a total burden reduction of 54 percent from the end of Fiscal Year 1995 baseline. Most of the reduction has resulted from program changes, rather than adjustments. The Department has clearly demonstrated its success in the significant burden reductions, in excess of statutory requirements and timetables, which Defense has achieved on a yearly basis. The Department, with guidance from the Office of Management and Budget, will continue to comply with both the provisions and intent of the Paperwork Reduction Act.

This letter was also addressed to the Honorable Dennis J. Kucinich, ranking member of the Subcommittee. Please let us know if we can be of further assistance. If you have further questions, do not hesitate to contact me.

Sincerely,

D.O. Cooke
Director

Rec'd 5/25/00

THE SECRETARY OF EDUCATION
WASHINGTON, D.C. 20202

May 24, 2000

Honorable David M. McIntosh
Chairman
Subcommittee on National Economic
Growth, Natural Resources, and
Regulatory Affairs
Committee on Government Reform
House of Representatives
Washington, DC 20515-6143

Dear Congressman McIntosh:

Thank you for your letter seeking recommendations for changes in specific laws that impose unnecessary or overly burdensome paperwork and would be good candidates for elimination or reduction. I am sending an identical response to Congressman Kucinich.

Reducing burdensome paperwork and unnecessary regulations has been a continuing priority for us. Over the past years, we have moved aggressively to identify areas for paperwork burden reduction. Two examples of recent reductions we have made are: 1) in FY 1999 we eliminated over 3.2 million hours of burden under the Federal Family Education Loan Program, and 2) this year we will reduce 1.5 million hours in burden by changing reporting requirements for the Ford Federal Direct Loan Program.

I also want to mention the work we have been doing under Section 498B of the Higher Education Amendments of 1998. Many operations and activities are under review to eliminate possible duplicative, nonuniform, or unnecessary regulations and procedures. The original Administration recommendations for the Higher Education Act also contained many simplifications of the student financial aid application process that Congress may want to revisit. For example, we concluded in 1998 that families and the federal government alike would benefit by greatly simplifying the asset tests in financial need analysis, which is in Part F of the Higher Education Act of 1965, as amended.

Another important aspect of holding down unnecessary paperwork and regulations is not permitting them in the first place. The Department uses the negotiated rulemaking process wherever possible to discourage requests for paperwork and regulations that go beyond the legitimate needs of the Department.

In most areas where we have been able to achieve large reductions in burden, moving to new electronic processes has been key in reducing the number of hours it takes our constituents to complete applications, and submit reports and other data. Any changes

you can make to existing legislation that would permit more use of technological tools across government programs would go a long way to reduce burden. At this time, we have no specific recommendations beyond that for legislative action. However, we will continue looking for opportunities to reduce the paperwork burden imposed on the public and to clarify the requirements of our requests to improve the quality of the data we collect and to simplify the process.

As we continue our efforts to reduce burden, we will notify you if we identify areas that require specific statutory change.

Yours sincerely,

Richard W. Riley

Rec'd 5/31/00

Department of Energy
Washington, DC 20585
May 19, 2000

The Honorable David M. McIntosh
Chairman
Subcommittee on National Economic
Growth, Natural Resources, and
Regulatory Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter of April 14, 2000, requesting recommendations in changes in specific laws that impose unnecessary or overly burdensome paperwork and are good candidates for elimination or reduction. We were to indicate the statutory citation, our proposed changes, and the rationale for our proposal.

My staff has conducted an initial review of existing laws and has not identified any candidates applicable to Department of Energy activities that, if amended, would lead to an elimination or reduction in burden. We are continuing our review to make sure we look at all potential candidates for elimination or reduction. We will report any findings to your subcommittee. We appreciate your efforts to reduce the paperwork burden imposed by existing legislation and welcome all improvements in this area.

If you require any further assistance, please contact David Berick, Deputy Assistant Secretary for House Liaison, on 202-586-2254.

Sincerely,

per Howard Hendon
John M. Gilligan
Chief Information Officer

Sec'y 7/6/00

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

JUN 20 2000

The Honorable David M. McIntosh
Chairman
Subcommittee on National Economic Growth
Natural Resources and Regulatory Affairs
Committee on Government Reform
House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

Thank you for your recent letter requesting specific recommendations for changes to existing laws that would reduce paperwork obligations on the public. We fully share the Subcommittee's concern that unnecessary and overly burdensome paperwork be eliminated. We examined current burden throughout the Department and identified certain specific and significant legislative changes (see enclosure) to programs at the Food and Drug Administration's Center for Food Safety and Applied Nutrition (FDA/CFSAN).

As the enclosed materials indicate, the FDA Modernization Act of 1997 "addressed the goal of removing information collection requirements that no longer were necessary" by eliminating or reducing information collection burdens on regulated industries (a list of these is provided). In addition, the enclosure includes a list of statutory provisions that could be revised or eliminated. One of these proposals would change notification frequency to FDA from every year to every three years for small businesses that want to exercise their right to an exemption from nutritional labeling.

We hope that you will find this information useful in your efforts to reduce the burden on the public. If you have any questions about the enclosed materials, please contact Robert Polson of our Office of Information Resources Management at 202/690-6741. We have also provided these recommendations in a letter to Mr. Kucinich.

Sincerely,

Donna E. Shalala

Enclosure

LEGISLATIVE STREAMLINING

In the face of mounting statutory requirements it will be very difficult for FDA to achieve its five percent burden reduction for each of the next two years, (i.e., the Prescription Drug Marketing Act; the Prescription Drug User Fee Act (PDUFA, 1992, 1997); Reinventing Government (REGO) Initiatives; the Paperwork Reduction Act (1995); the Electronic Freedom of Information Act (EFOIA, 1996), Animal Drug Availability Act (1996), and the Food and Drug Administration Modernization Act (1997)).

The FDA Modernization Act of 1997 has positioned the Agency to fulfill its regulatory and safety requirements as the nation and the world has entered the new millennium. This has had a major impact on how the Agency does business, the specifics have been identified, and are being implemented. The Agency recognizes that regardless of the new Act, opportunities exist for legislative streamlining with the identification of requirements that are no longer useful and impose unnecessary burden on the public.

Much of the FDA Modernization Act of 1997 dealt with updating the FDA review mechanisms and many sections dealt with mandates to streamline the approval process for doing clinical studies, thus speeding up the development and marketing of products. More specifically, certain sections have addressed the goal of removing information collection requirements that no longer were necessary. FDA lists these sections that the FDA Modernization Act eliminated or reduced information collection burdens on the regulated industries.

§§125(a) and (b) no longer require manufacturers to submit their insulin and antibiotic products to FDA for certification.

§126 eliminated certain labeling requirements for prescription drugs.

§213 eliminated medical device reporting for distributors and reduces the frequency of device user facility reports from semiannually to annually.

The Agency identified sections for legislative streamlining, and were least affected by the FDA Modernization Act and would benefit the public most.

To this end, FDA's Center for Food Safety and Applied Nutrition (CFSAN) reviewed and identified statutory provisions of the Food, Drug and Cosmetic Act that could be revised or eliminated:

1. Amend Section 403(q)(5)(E)(i).

    a. This provision requires small businesses to notify FDA annually if they want to exercise their right to an exemption from nutritional labeling. Industry has criticized this as being too frequent and an inefficient use of FDA resources to file the notification, enter the information into a database, and acknowledge receipt of the notifications every year.

    b. The Agency has currently received 8,421 notices from small businesses representing an estimated paperwork hour-burden of approximately 67,000 hours. A notification frequency of every 3 years would reduce this paperwork burden on industry approximately one-third or approximately 22,000 hours by reducing the frequency of reports. At the same time, there are statutory and regulatory provisions in effect to ensure that firms or products that

are no longer eligible for exemption will comply with the requirements for nutritional labeling.

c. Recommend amending Section 403(q)(5)(E)(I) by striking out "During the 12-month period" and inserting in lieu thereof "During the 3-year period."

2. Amend 403(q)(4)(C)(ii)

a. This provision requires FDA to survey the retail market every 2 years to determine whether retailers are voluntarily providing nutrition information for the most commonly consumed fruits, vegetables, and fish and to issue a report to Congress on its findings.

b. FDA has conducted under contract, five surveys (1990 baseline, 1992, 1994, 1996, 1998) to determine retailer compliance with the guidelines of the voluntary nutrition labeling program. For each of the surveys, substantial compliance by retailers was met. Although the nutrition labeling is voluntary, close to three-fourths of the retailers have consistently shown a commitment to the program. The frequency of this reporting is an inefficient use of FDA and industry resources and affords little public health protection. However, FDA believes that a survey every four years would be adequate to measure compliance and to encourage retailers to provide nutrition information voluntarily for some food substances, such as raw foods.

c. Recommend amending Section 21 CFR 343(q)(4)*C)(ii) by striking out "two years" and inserting in lieu thereof "four years."

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-3000

CHIEF INFORMATION OFFICER

Rec'd 5/22/00

MAY 17 2000

The Majority Staff Subcommittee
National Economic Growth, Natural Resources,
and Regulatory Affairs
B-377 Rayburn House Office Building
Washington, DC 20515

Dear Majority Staff Subcommittee:

Thank you for your letter of April 14, 2000, to the Department of Housing and Urban Development (HUD). Your letter requested recommendations for changes in specific laws that impose unnecessary burdensome paperwork and are good candidates for elimination or reduction.

In response to your request, we have conducted an extensive review of HUD's information collection requirements to identify any laws that impose burdensome paperwork requirements. As a result of this review, we do not offer any changes to the current legislation.

We, at HUD, continue our efforts to improve information collection processes that better utilize our information resources to minimize the burden imposed on the Public. We have been successful in significantly exceeding the burden reduction goals mandated by the Paperwork Reduction Act of 1995.

Thank you for your interest in our paperwork reduction efforts.

Sincerely,

Gloria Parker

Gloria R. Parker
Chief Information Officer

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

June 14, 2000

Memorandum

TO: Charles Markell
Office of Legislative Counsel

FROM: Debra E. Sonderman
Director, Office of Acquisition and Property Management

SUBJECT: **GOVERNMENT REFORM COMMITTEE REQUEST FOR RECOMMENDATIONS ON PAPERWORK REDUCTION**

This is in response to the June 9, 2000 Legislative Counsel Referral soliciting recommendations for changes in specific laws which impose unnecessary or overly burdensome paperwork and are good candidates for elimination or reduction. The Office of Acquisition and Property Management proposes changes to the following regulations supported by separate statutes:

Davis-Bacon Act (40 U.S.C. 276a - 276a-7)

The Davis-Bacon Act provides that contracts in excess of $2,000 to which the United States or the District of Columbia is a party for construction, alteration or repairs (including painting and decorating) of public buildings or public works within the United States shall contain coverage ensuring that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor.

The Department of the Interior and the Governmentwide acquisition communities are in need of support for Davis-Bacon Act reform. The March 29, 1999 issue of *Federal Contracts Report* and the April 1999 issue of *Contract Management* covered House and Senate initiatives to repeal or reform the Davis-Bacon Act. The *Federal Contracts Report* article indicated that the Mechanical, Electrical and Sheet Metal Alliance, in a March 25, 1999 letter to members of the Senate, proposed that rather than repeal the Davis-Bacon Act, the Senate should consider raising the Act's coverage threshold from the current $2,000 to $100,000 for new construction and to $25,000 for renovations.

As a Federal agency which in Fiscal Year 1998, spent over 21 percent of its contracting budget on construction and construction-related work, the Department of the Interior would benefit from Davis-Bacon Act reforms. The *Federal Contracts Report* article quotes a Senate Budget committee spokeswoman as stating that repeal of the Davis-Bacon Act "would save the taxpayers

an estimated $4 billion over five years." Based on the experience and comments of our contracting operations personnel, we too, believe that much in the way of savings would be realized through the Act's reform.

Because of its low dollar threshold, the Davis-Bacon Act is very expensive to implement. The administrative costs related to Davis-Bacon Act compliance oversight and reporting are equally burdensome to the Government and its contractors. These costs are not at all proportionate to the total value of the contract actions themselves, and in many cases, especially for contract actions between $2,000 and $10,000, may actually exceed the contract award amount. According to Federal Reserve statistics, the purchasing power of one U.S. dollar on March 3, 1931, the day the Davis-Bacon Act was passed into law, is today the equivalent of $10.73. If the Davis-Bacon Act's 1933 $2,000 threshold rose with Consumer Price Index, that same $2,000 would be equal to $21,460.53 today.

In addition to the realization of potential savings, reform of the Davis-Bacon Act would stimulate competition in the construction contracting area for small and very small businesses. A large proportion of our construction and alteration contracting projects are comparatively small dollar work - much of it under $100,000. The work is performed in remote locations, e.g., at parks, wildlife refuges, and other areas served by Department of the Interior bureaus and offices. These types of jobs are especially attractive to local small and very small businesses, i.e., the proverbial "Mom and Pop" contracting businesses. Unfortunately, these same businesses are prevented from bidding on our construction/alteration projects because they simply cannot and do not pay their employees the prevailing wage rates required under the Davis-Bacon Act.

Public Printing and Documents (Title 44 U.S.C. 501) (Pub. L. 102-392, title II, sec. 207(a), Oct. 6, 1992, 106 Stat. 1719, as amended by Pub. L. 103-283, title II, sec. 207, July 22, 2994, 108 Stat. 1440)

Title 44, section 501 of the U.S. Code prohibits the expenditure of funds by any entity of the executive branch for the procurement of "any printing related to the production of Government publications (including printed forms), unless such procurement is by or through the Government Printing Office." "Printing" as used in section 501 includes "the processes of composition, platemaking, presswork, duplicating, silk screen processes, binding, microform, and the end items of such processes." The prohibition does not apply to individual printing orders costing not more than $1,000 if: (1) the work is not of a continuing or repetitive nature; and (2) is certified by the Public Printer as being included in a class of work which cannot be provided more economically through the Government Printing Office (GPO).

Requiring certification/waiver by the Public Printer for *every* comparatively low-dollar, emergency, or incidental duplication requirement under $1,000 is impracticable, time consuming,

and extremely burdensome. With high quality duplication services available from commercial sources that are open for business 24-hours a day, executive agencies should be authorized to satisfy emergency and incidental duplicating work requirements costing not more than $1,000 without having to request and obtain a waiver from the Public Printer.

Home-to-Work Transportation (31 U.S.C. 1344)

Another proposed change is to 31 U.S.C. section 1344 regarding official use of Government passenger carriers by employees between their residences and places of employment ("home-to-work" transportation). Presently, employees may be authorized home-to-work transportation for a period of 15 calendar days. Under certain circumstances, 31 U.S.C. 1344(d)(2) allows for 90-day extensions of home-to-work transportation beyond the initial 15-day period. Only agency heads have the authority to determine and authorize home-to-work eligibility. 31 U.S.C. 1344(d)(3) prohibits agency heads from delegating this authority. In addition, 31 U.S.C. 1344(d)(4) requires agencies to notify Congress of each home-to-work determination and designation. Notifications must include the name and title of the officer or employee authorized home-to-work transportation; the reasons for determinations, e.g., a clear and present danger, emergency, or other compelling operational considerations; and the expected duration of the authorization.

The Department of the Interior, the General Services Administration (GSA), and other Federal agencies support changing the delegation of authority for home-to-work transportation from agency heads to other senior level officials. In particular, the Department of the Interior hopes to eliminate the burdensome requirements related to home-to-work transportation by promoting changes in the delegation of authority and reductions in home-to-work request processing times. Interior receives home-to-work transportation requests under compelling, and often, emergency situations. These situations are of great concern to the Office of Acquisition and Property Management, and we understand requestors' frustration in not receiving prompt resolution to their home-to-work transportation requests.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

RCVD 5/16/00

May 15, 2000

The Honorable David M. McIntosh
Chairman
Subcommittee on National Economic
Growth, Natural Resources and
Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515-6143

Dear Mr. Chairman:

Thank you for your letter of April 14, 2000 to Attorney General Reno concerning the implementation of the Paperwork Reduction Act of 1995. Specifically, you requested recommendations for changes in specific laws which impose unnecessary or overly burdensome paperwork and are good candidates for elimination or reduction.

The Department currently has 249 active information collections that were approved by the Office of Management and Budget, Office of Information and Regulatory Affairs. Only 12 of the 36 Department Components use Information Collections to meet some of their mission requirements. Further, each Information Collection directly supports one or more of the Component missions mandated by law.

In preparing this response, the Department's Chief Information Officer asked each Component to examine their information collections and determine if the existing laws impose unnecessary or overly burdensome paperwork and would be a good candidate for elimination or reduction. Upon completion of the Component's independent internal review, each Component reported that no Component Information Collection imposed an unnecessary or overly burdensome amount of paperwork on the public, nor would the statute be a good candidate for elimination or reduction.

We recognize that in any organization as large as the Department of Justice, improvement and reduction in paperwork burdens is a never-ending challenge. The Department is continually looking for opportunities to streamline our operations and reduce waste, inefficiency, and frustration to the

public. If you have specific concerns about paperwork burdens imposed or implemented by the Department, I encourage you to convey them to me immediately. However, at this time, we do not have any specific suggestions to offer you.

Please do not hesitate to contact me, if I may be of further assistance on this or any other matter.

Sincerely,

Robert Raben
Assistant Attorney General

Rec'd 5/19/00

U.S. Department of Labor

Office of the Assistant Secretary
for Administration and Management
Washington, D.C. 20210

Reply to the Attention of:

MAY 18 2000

The Honorable David M. McIntosh
Chairman
Subcommittee on National Economic
Growth, Natural Resources, and
Regulatory Affairs
House of Representatives
Washington D.C. 20515-6143

Dear Mr. Chairman:

This is in response to the Subcommittee's letter of April 14 of this year. The Subcommittee requested our recommendations for changes in specific laws which impose unnecessary or overly burdensome paperwork requirements and are good candidates for elimination or reduction.

The Department is always looking for ways it can reduce paperwork burdens while fulfilling its mission to ensure the Nation has a workforce ready to meet the challenges of the 21st century. However, after careful consideration of your request, we have determined that we have no statutory changes to recommend to you at this time. You can be assured, however, that we will continue to closely scrutinize our programs to eliminate or reduce paperwork burdens which are unnecessary or overly burdensome.

Sincerely,

for PATRICIA W. LATTIMORE
Assistant Secretary for
Administration and Management/
Chief Information Officer

United States Department of State

Washington, D.C. 20520

JUN 30 2000

Dear Mr. Chairman:

This is in response to your letter of April 14 to Secretary Albright, requesting that we review the Department's public paperwork burdens with an eye to suggesting possible burden reductions through revisions to relevant statutes.

Regrettably, we have no comments on revisions to statutes that would result in any significant reduction in public burden.

As you know, Department of State information collections are generally limited in scope, and our programs do not contact the public to the same extent as do the activities of other U.S. Government entities. Our major collections (and burdens) consist of two specific information collections-passport applications and visa applications, which account for well over ninety per cent of our total public burden. The third is a more general area, a number of collections inherited from the former U.S. Information Agency. These latter are primarily evaluation surveys designed to improve U.S. student exchange, scholarship, and educational and cultural grants programs.

Aside from the burden on the U.S. public as a result of applications for passports, the majority of the Department's public burden falls on foreign nationals. Revisions to passport law, and the Immigration and Naturalization Act would provide burden relief for the public, but also may entail increased risks from terrorist, criminal, or other adverse activities. Conversely, eliminating the foreign public from coverage under the law would reduce reported burden, without lessening the actual foreign public burden. Nevertheless, the Subcommittee may deem it advisable that the law be modified or interpreted to require reporting on only that burden imposed on the U.S. public.

The Honorable
David M. McIntosh, Chairman,
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs,
House of Representatives.

We hope this information is helpful to you. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Rec'd 5/24/00

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

May 26, 2000

The Honorable David M. McIntosh
Chairman, Subcommittee on National
Economic Growth, Natural Resources and
Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

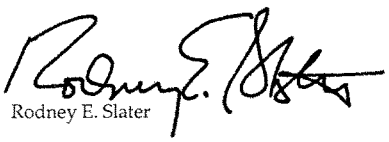
This letter is in response to your April 14, 2000, letter requesting recommendations for changes in specific laws that impose unnecessary or overly burdensome paperwork burdens and therefore are good candidates for repeal or amendment.

The Department of Transportation requests that 49 U.S.C. 33112 be considered by the Subcommittee for repeal. Section 33112, Insurance reports and information, mandates an annual report by automobile insurance companies about the theft and recovery of motor vehicles and the effects of this activity on insurance premium levels. Our experience over 16 years since enactment of the requirement in the Motor Vehicle Theft Law Enforcement Act of 1984, as amended by the Anti Car Theft Act (ACTA) of 1992 (P.L. 102-519), makes clear that the report has outlived its usefulness. The auto theft data, which is collected from certain insurance companies, is normally submitted three years after a theft has occurred. By this time, the data is of very limited value to the Department, law enforcement, or the public. Repeal of section 33112 would save the insurance companies an estimated $1,168,090 and rental/leasing companies an estimated $99,840 annually. It would also save the agency an estimated $40,000 committed annually to analyze the data and reduce the burden imposed on the public by 197,390 hours.

The Department has proposed that Congress amend section 49 U.S.C. 20901(a) to eliminate the requirement that railroads' reports to the Federal Railroad Administration regarding accidents and incidents on their properties be notarized, and to create an exception to the requirement that reports be submitted on a monthly basis, by permitting reports to be made at longer intervals, up to quarterly, if no reportable accidents or incidents occur. The notarization requirement causes unnecessary expense and delay, and is an obstacle to filing reports electronically. The requirement for monthly reports is unnecessarily rigid, particularly for small railroads and those who have no events to report. Our proposal would also provide discretion to set different reporting requirements for different classes of railroads and would facilitate electronic filing and a corresponding reduction in paper filings. This proposal has been referred to the Committee on Transportation and Infrastructure for consideration.

We appreciate the opportunity to comment. We continue to analyze agency paperwork burdens and will advise your staff of any additional candidates for repeal or amendment.

Sincerely,



Rodney E. Slater

Recd 6/26/00
FRM OGC/FRCAS

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

June 22, 2000

The Honorable David M. McIntosh
Chairman
Subcommittee on Natural Economic Growth,
Natural Resources, and Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your recent letter to Secretary Summers soliciting recommendations for changes to laws that impose unnecessary or overly burdensome paperwork requirements.

The Department of the Treasury strives to minimize paperwork burdens imposed on the public consistent with statutory requirements and sound administrative and enforcement policies. We have identified several statutory provisions that we believe could be amended to reduce paperwork burdens on the public as well as Federal agencies. These are described in the enclosure to this letter. We will continue to review statutes under the Department's jurisdiction and we will advise you if additional provisions are identified.

We appreciate your interest in eliminating unnecessary statutory paperwork burdens and minimizing the burdens of those requirements that are necessary.

Sincerely,

Joan Donoghue
Acting General Counsel

Enclosures

cc: The Honorable Dennis Kucinich

DEPARTMENT OF THE TREASURY

Recommended Changes to Statutory Provisions that Impose Unnecessary or Overly Burdensome Paperwork Requirements

1. Provide Marriage Penalty Relief and Increase the Standard Deduction

   Citation: 26 U.S.C. 63

   Change: Increase the standard deduction for married taxpayers filing a joint return by up to $1,450 (in 2001 dollars).

   Rationale: This change would increase the number of married taxpayers that can minimize their tax liability by claiming the standard deduction instead of itemizing deductions on their Federal income tax return.

2. Alternative Minimum Tax (AMT) Relief for Individuals

   Citation: 26 U.S.C. 55-59

   Change: Allow dependent personal exemptions and standard deduction in computing AMT.

   Rationale: This change would reduce the number of individual taxpayers subject to the AMT and required to file Form 6251. It would also eliminate the need for taxpayers to itemize deductions for the sole purpose of reducing AMT liability.

3. Simplify and Increase the Standard Deduction for Dependents

   Citation 26 U.S.C. 63

   Change: Increase standard deduction for dependent filers to the amount of the dependent's earned income plus $700 (but not more than the regular standard deduction).

   Rationale: This change would reduce the number of dependents required to file a tax return.

4. Simplification of Definition of Child Dependent

   Citation: 26 U.S.C. 151

   Change: Base the exemption for dependent children on relationship and residency.

   Rationale: This change would eliminate the need for taxpayers to maintain extensive records to prove that they support their own children.

5. Index Maximum Exclusion for Capital Gains on Sale of Principal Residence

   Citation: 26 U.S.C. 121

   Change: Index the maximum amount of gain that can be excluded from gross income when a principal residence is sold.

   Rationale: This change would increase the number of taxpayers who are not required to file Schedule D (capital gains), Form 1040, when their principal residence is sold.

6. Tax Credit To Encourage Electronic Filing of Individual Income Tax Returns

   Citation: 26 U.S.C. 6012

   Change: Provide a temporary credit of $10 for each income tax return electronically filed and a credit of $5 for each income tax return filed through Telefile.

   Rationale: The change would provide an incentive for taxpayers to avoid the burdens associated with filling out paper returns.

7. Expensing for Small Business

   Citation: 26 U.S.C. 179

   Change: Expand the circumstances under which expenses can be deducted when incurred instead of depreciated over the useful life of the property.

   Rationale: This change would increase the extent to which taxpayers can recover the cost of property on the income tax return for the year in which the property is placed in service rather than as depreciation deductions on Forms 4562 filed each year during the recovery period of the property.

8. Optional Self-Employment Contributions Act Computations

Citation: 26 U.S.C. 1401-1403

Change: Combine the two optional methods of computing income subject to the self-employment tax into a single method.

Rationale: This change would simplify self-employment tax computations for approximately 30,000 taxpayers and would simplify Schedule SE, Form 1040, for the millions of self-employed workers that do not use the optional methods.

9. Simplify the Foreign Tax Credit Limitation for Dividends from 10/50 Companies

Citation: 26 U.S.C. 901-908

Change: Simplify the application of the foreign tax credit limitation by applying the "look-through" approach immediately to dividends paid by a company (other than a controlled foreign corporation or a passive foreign investment company) in which the taxpayer owns at least 10 percent of the voting stock regardless of the year in which the earnings and profits out of which the dividend is paid are accumulated.

Rationale: Eliminating the provision under current law requiring the concurrent application of a different test for dividends paid out of pre-2003 earnings and profits will reduce complexity and compliance burdens relating to Form 1118 for U.S. taxpayers participating in foreign joint ventures and foreign investment through affiliates that are not majority owned.

10. Provide Interest Treatment for Dividends Paid by Certain Regulated Investment Companies to Foreign Persons

Citation: 26 U.S.C. 1441

Change: Treat as interest exempt from withholding upon distribution to foreign investors income received by a domestic mutual fund that invests substantially all of its assets in U.S. debt securities or cash.

Rationale: This change would relieve these mutual funds of the obligation to withhold tax on amounts paid to foreign shareholders and file Forms 1042

and 1042-S with respect to amounts withheld.

11. Allow Deduction for Charitable Contributions for Taxpayers who do not Itemize Deductions

Citation: 26 U.S.C. 170

Change: Allow taxpayers who do not itemize deductions to deduct 50 percent of their charitable contributions in excess of $1,000 ($2,000 for married taxpayers filing jointly).

Rationale: For taxpayers whose itemized deductions exceed the standard deduction by less than the amount allowed under the proposal, the change would eliminate the need to itemize all deductions on Form 1040, Schedule A.

12. Allow Flexibility in Setting the Return Periods for Small Producers of Wine and Beer That Withdraw Their Product Under Bond for Deferred Payment of Tax

Citation: 26 U.S.C. 5061(d)(1)

Change: Authorize ATF to prescribe by regulation the return period for small producers of wine and beer that withdraw their product under bond for deferred payment of tax.

Rationale: By providing such flexibility ATF will be able to eliminate approximately 90,000 tax returns each year and to reduce its administrative costs by about $270,000 annually.

13. Reporting Regulations to the Congress

Citation: 5 U.S.C. 801

Change: Eliminate the requirement that Federal agencies transmit a copy of each non-major final rule published in the *Federal Register* to the House, Senate, and General Accounting Office.

Rationale: Transmitting three copies of each non-major final rule published in the *Federal Register* is wasteful and unnecessary. Eliminating this requirement would not affect the congressional disapproval procedures codified at 5 U.S.C. 802 if section 802(b)(2) is amended to provide that "submission or publication date" means the date of publication in the *Federal Register* in the case of a non-major rule published therein.

DEPARTMENT OF VETERANS AFFAIRS
PRINCIPAL DEPUTY ASSISTANT SECRETARY
FOR INFORMATION AND TECHNOLOGY
WASHINGTON DC 20420

JUN 5 2000

The Honorable David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
National Resources and Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

The Secretary asked me to reply to your letter concerning recommendations for changes in specific Paperwork Reduction Act laws that impose unnecessary burdens.

The Department of Veterans Affairs (VA) administers an integrated program of benefits and services established by laws for veterans, service personnel, and their dependents and beneficiaries. During fiscal year 2000, these programs will impose approximately 6.91 million "burden hours" on veterans, members of the Selected Reserves and National Guard, and beneficiaries of veterans. These burden hours include providing medical care, compensation, pension, education, vocational rehabilitation and counseling, loan guaranty, insurance and burial benefits. Our recommendations to reduce unnecessary burdens are enclosed.

We have also provided this information to The Honorable Dennis J. Kucinich, Ranking Member of the Subcommittee on National Economic Growth, National Resources and Regulatory Affairs. If there are any questions concerning this matter, please contact me at (202) 273-8842 or have a member of your staff contact Donald L. Neilson, Director, Information Management Service (045A4), at (202) 273-8135.

Sincerely,

Robert P. Bubniak
Acting

Enclosure

Department of Veterans Affairs
Recommendations for Changes in Specific Paperwork Reduction Act (PRA) Laws That Impose Unnecessary Burdens

Recommendation 1. VA recommends that consideration be given to amending 44 U.S.C. Chapter 35 to permit the Director, Office of Management and Budget (OMB) to provide simplified procedures for the approval of information collections required by statute and to permit OMB to approve such collections for up to 5 years.

a. The current process for clearing "information collections" is cumbersome, requiring two or more publications in the *Federal Register* and extensive analysis of the nature and purpose of the "collection" and of "respondent burdens" in multi-level agency and OMB reviews. Virtually the same elaborate processing is required for "collections" required by statute and those undertaken by an agency on its own initiative. Further, regardless of the nature of collection, OMB may not approve a collection of information for a period in excess of 3 years (44 U.S.C. 3507(g)). It is extremely rare that the public would have comments on any information collection published in the Federal Register.

b. While protection of the public from information collection abuses by an overzealous government is admirable, these elaborate procedures are an unnecessary waste of resources where the "information collection" is a straight-forward implementation of statutory requirements; for example, requiring simple forms for claiming government benefits, 38 U.S.C. § 501(a)(2), and the filing of appeals following statutory procedures, 38 U.S.C. § 7105.

Recommendation 2. All clinical examinations and clinical research should be exempted from the PRA and OMB review.

Although 5 CFR 1320.3(h)(5) excludes clinical examinations and clinical research from the definition of information, the same citation also states that OMB may determine if any specific item constitutes "information." Our experience shows that OMB invokes this clause only when the examination or research concerns a politically sensitive topic such as Persian Gulf, Agent Orange, Prisoner of War, and Radiation Exposure. Due to the heath threats involved, this is precisely the type of examination/research that needs to proceed quickly without PRA restrictions or OMB review.

Recommendation 3. Information collections with well defined benefit and practical utility, such as applications and claims for benefits, and invoices claiming payment should be exempted from the PRA and OMB review.

Applications and claims for benefits, and invoices claiming payment constitute 88% of the Department's collection of information burden. These collections are required in order to receive a benefit, including entitlements, grants, permits, loans, and contracts. The time required (a minimum of 90 days after agency processing) obtaining OMB approval for a new or revised collection of information hinders VA's ability to respond

quickly to the changing needs of veterans and delays VA implementation of legislative changes. Applications for benefits require only the information needed to make a decision on the request. The veteran or beneficiary dictates when the information is submitted. Since the claim is self initiated there is no other source of similar information and there is no way to reduce the frequency of submission. All instruments used to collect information are reviewed regularly to assure that no extraneous data is requested.

Recommendation 4. OMB clearance could be delegated to the agency level for program evaluation surveys being conducted by all federal agencies.

Generally, it takes a minimum of 90 days for agencies to obtain permission from OMB to perform any survey other than a customer satisfaction survey. This will allow departments to assess whether programs are meeting their Congressionally-mandated intent in a shorter timeframe.

FE ca 6/12/00

CORPORATION
FOR NATIONAL
SERVICE

May 15, 2000

The Honorable David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
Committee on Government Reform
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Mr. Chairman:

I am responding to your request of April 14, 2000, concerning recommendations for changes or elimination of existing laws that we feel impose unnecessary paperwork burdens on the Corporation for National Service or the people we serve.

We have no legislative recommendations to make at this time. Our experience in implementing the Paperwork Reduction Act has been positive. Over the years we have taken a number of steps to devolve greater authority to states and grantees and to minimize the burden placed upon them. We will continue to pursue these improvements administratively.

Thank you for the opportunity to comment on the Paperwork Reduction Act.

Sincerely,

Kevin J. Avery
Director, Congressional and
Intergovernmental Affairs

Rec'd 5/23/00

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 22 2000

OFFICE OF
ENVIRONMENTAL INFORMATION

The Honorable David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs
Committee on Government Reform
House of Representatives
Washington, DC 20515-6143

Dear Mr. Chairman:

Thank you for your letter of April 14, 2000, requesting that the U.S. Environmental Protection Agency (EPA) make recommendations for changes in specific laws which impose unnecessary or overly burdensome paperwork and are good candidates for elimination or reduction. EPA strongly supports the need to reduce burden and is committed to making burden reduction a priority within our Agency. Prior to the enactment of the 1995 amendments to the Paperwork Reduction Act (PRA), Administrator Carol Browner announced that the Agency's goal was to reduce paperwork burden by 25 percent. This effort addressed the full range of the Agency's regulatory programs, including air, water, waste, toxic substances, and pesticides. Although the aggregate total paperwork burden continued to rise because of new requirements, the Agency was able to offset the rise by making changes in other program paperwork requirements.

On January 13, 1997, the Office of Management and Budget (OMB) requested (Bulletin # 97-03) agencies to prepare an Information Streamlining Plan (ISP). This request stated, "Each Agency is to identify specific administrative changes, program restructures, regulatory reinventions, and legislative proposals that will reduce total burden on the public." After a thorough analysis of the Agency's regulations and statutes, EPA did not make any recommendations for changes to any of the environmental laws. EPA did, however, make recommendations for changes to the regulations that implement these laws to reduce paperwork burdens. For example, the Office of Solid Waste initiated a burden reduction effort for the Resource Conservation and Recovery Act program. This involves a comprehensive review of all program record keeping and reporting requirements. EPA plans to propose a rule by the end of this year with significant burden reduction alternatives, that could reduce paperwork burden by as much as 40 percent.

Since the time that EPA prepared the Information Streamlining Plan, Congress enacted the 1996 Amendments to the Safe Drinking Water Act and the Food Quality Protection Act of 1996. After reviewing the provisions of both of these important environmental laws, the Agency has no recommendations for changes in those statutes to reduce reporting burdens.

The Agency continues to look for opportunities to reduce paperwork burdens on the public. On April 27 and 28, EPA held four public meetings as part of an OMB initiative sponsored by the Office of Information and Regulatory Affairs. The purpose of these meetings was to discuss and gain public input on a number of burden reduction initiatives. In addition, the Agency continues to develop its information integration effort that will establish a single, integrated multi-media repository of environmental data and tools. This initiative is designed to promote more efficient ways of providing public health and environmental protection. Two key components of the initiative - - the Central Receiving Facility (CRF) and the Facility Registry System (FRS) - - provide good examples. The CRF includes the infrastructure and procedures needed to centralize and streamline the receipt, validation, storage, and sharing of the environmental data reported to EPA. The CRF will address issues of security, data quality, error prevention and correction, burden reduction, and efficiency in the electronic transmission of data. The FRS is a database to house the Agency's master, authoritative facility identification information. The FRS will provide a single source of facility identification information linked to specific program records and enable integration and multi-media analysis at the unique facility level. It will provide burden reduction by eliminating the need for multiple submissions of facility identification data by regulated entities.

If you have any questions, please contact me or Mark Luttner, Director of the Office of Information Collection, at 260-4030.

Sincerely,

Margaret N. Schneider
Principal Deputy Assistant Administrator

cc: The Honorable Dan Burton
The Honorable Henry Waxman

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

MAY 22 2000

The Honorable David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
National Resources and Regulatory Affairs
U.S. House of Representatives
Washington, D. C. 20515

Dear Chairman McIntosh:

This is in response to your letter of April 14, 2000, to Chairwoman Ida L. Castro requesting that the Equal Employment Opportunity Commission (EEOC) recommend changes to laws that impose unnecessary or overly burdensome paper work and would be suitable for elimination or reduction.

The EEOC does not recommend any change to of any of the civil rights laws that the EEOC is responsible for enforcing. We have an established goal of eliminating or refining any requirement which might possibly be construed as unnecessary or overly burdensome. In keeping with this goal we continuously review our regulations and paper work requirements. Where we have found that streamlining is warranted or that the process could be simplified, we have done so. An illustration of this is our computerization of data collection requirements. This option has resulted in a significant overall reduction in the paper work burden.

The EEOC will continue to be vigilant in its efforts to ensure that paper work requirements are kept at the least burdensome level practicable.

We hope this information is helpful to you.

Sincerely,

William J. White, Jr.
Acting Director of Communications
and Legislative Affairs

Federal Emergency Management Agency Rec'd 6/16/00
Washington, D.C. 20472

June 7, 2000

OS-PS-RM

The Honorable David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs
House of Representatives
Washington, DC 20515-6143

Dear Mr. McIntosh:

This is in response to your April 14, 2000, letter to Director James Lee Witt, Director, Federal Emergency Management Agency. In that letter, you requested recommendations for changes to specific laws that impose unnecessary or overly burdensome paperwork and are good candidates for elimination or reduction.

After careful consideration of your request, we have determined that existing statutes regarding our programs do not impose unnecessary or overly burdensome paperwork on the public. We believe that our requests for information (which may be directly or indirectly required by statute) from the public are essential to the proper administration of FEMA's mission and programs. Without the information, we would not be able to provide the high quality level of service and support to our customers, including disaster victims, state and local governments, etc.

There is another area that has also been considered—those reporting requirements imposed by statute on Federal departments and agencies. Upon a review of House Document No. 103-186, Reports to Be Made to Congress, Part VI, Reports by Independent Agencies, Board, and Commissions, we found that there are several statutes that are no longer valid, yet still require reports to be submitted to Congress. The list of reports for the Federal Emergency Management Agency includes statutory reports that are no longer needed because the statute has been repealed or the report is no longer relevant (see enclosure). Also, for most of the reports listed, we believe that absent a statutory requirement, the Agency would still provide reports and other information to Congress on the activities and status of our programs, annually or as needed.

In addition, we believe that while the purpose and intent of the Paperwork Reduction Act is practical and useful, it has become overly burdensome on the Federal departments and agencies to complete the clearance process to obtain OMB approval in order to use certain data collection instruments. The time, effort, resources and cost to the Agency to comply with the provisions of the Paperwork Reduction Act to obtain OMB clearance is in some cases, higher that the actual development and use of the data collection

instrument. We recommend that during your review, you consider making the definition of an information collection clearer and provide additional exemption categories for data collection instruments that impose minimal burden on respondents (such as: course evaluation forms are used by non-federal students at our National Emergency Training Center in Emmitsburg, MD, or at our Mount Weather Emergency Assistance Center, in Berryville, VA. at the end of a course to evaluate the course or the facilities; or application forms that take 1 hour or less for a respondent to complete when the total burden for one collection is 2,500 hours or less). In addition, we would urge that you consider establishing a burden hour threshold when collections under a certain number of burden hours, e.g., 5,000 hours, would not be subject to the OMB approval process.

Thank you for the opportunity to provide information for your Subcommittee's review and use. If you have any questions, please have a member of your staff contact the Office of Congressional and Legislative Affairs at (202) 646-4500.

Sincerely,

G. Clay Hollister
Chief Information Officer

Enclosure

cc: The Honorable Dan Burton
The Honorable Henry A. Waxman

Federal Emergency Management Agency
Statutory "Sunset" on Reports to Congress
Review of Reporting Requirements Listed in House Document No. 103-160, Part IV

Nature of Report	Authority	Finding	Explanation/Recommendation
Contract covered and entered into with foreign entities in fiscal years 1990 and 1991.	PL 101-614, Sec. 13(d) (104 Stat.3241)	Not critical	
Crimes and Crime Prevention			
Crime insurance programs	PL 101-137, Sec 6(d) (103 Stat. 825)	Repealed	The program is no longer authorized or in operation.
Disasters and Disaster Relief			
National Earthquake Hazards Reduction Program	PL 101-614, Sec 5 (104 Stat. 3233)	Not critical	
Advisory Committee recommendations made to the Program	PL 101-614, Sec 7 (104 Stat. 3237)	Not critical	
Activities relating to fire prevention and control	15 U.S.C. 2215	Not critical	
Federal assumption of flood insurance program	42 U.S.C. 4071(b)	Not critical	The report relates to notice of a change in the Program's operating relationship with the insurance industry and is no longer relevant. The referenced change from "Part A", Industry Program with Federal Financial Assistance, to "Part B", Government Program with Industry Assistance, took place in 1978.
Reviews of Federal and State activities in disaster preparedness and assistance	42 U.S.C. 5156	Not critical	
National Earthquake Hazards Reduction Program plan	42 U.S.C. 7704(b)(2)(E)	Not critical	
Environmental protection and Conservation			
Notice of intention to initiate a rulemaking for modification in reporting frequency of chemical release forms	PL 99-499, Sec. 313 (100 Stat. 1745)	Not critical	
Government Records, Documents, and Information			
Activities of the Inspector General	PL 95-452, Sec. 5(b) (102 Stat. 2515, 2526)	Exempt	Modify the frequency of the reporting requirement from semiannually to annually.
Reports by Inspector General of particularly serious or flagrant problems, abuses, or deficiencies in the administration of programs and operations.	PL 95-452, Sec. 5(d) (102 Stat. 2515)	Exempt	
Housing and Housing Finance			
Activities of the Emergency Food and Shelter Program National Board	42 U.S.C. 11331	Not critical	

Federal Emergency Management Agency
Statutory "Sunset" on Reports to Congress
Review of Reporting Requirements Listed in House Document No. 103-186, Part IV

National Security and Intelligence Operations			
Administration of the Strategic and Critical Materials Stock Piling Act	50 U.S.C. 98h-2(b)	Not critical	
Public Contracts, Procurement, and Property			
Civil defense property acquisitions	50 U.S.C. app. 2281(b)	Repealed	Repealed by the Civil Defense Act.
Proposed national defense contracts exceeding $25,000,000	50 U.S.C. 1431	Critical	The agency is required to obtain approval from Congress for national defense contracts in excess of $25,000,000. Although the agency can not currently identify a need for this type of coordination with Congress, it is reluctant to suggest that the statutory requirement be eliminated.
Contracts to facilitate the national defense entered into, amended, or modified	50 U.S.C. 1434	Repealed	Repealed by the Civil Defense Act.
Public Lands and Real Property			
Notice of certain proposed real property transactions	50 U.S.C. app. 2285(a)	Not critical	
Real property transactions of between $5,000 and $50,000	50 U.S.C. app. 2285(b)	Not critical	
Public Safety			
Civil defense operations	50 U.S.C. app. 2258	Repealed	Repealed by the Civil Defense Act.
Interstate civil defense compacts	50 U.S.C. app. 2281(g)	Repealed	Repealed by the Civil Defense Act.
Contributions to States for civil defense equipment and facilities expenses	50 U.S.C. app. 2281(f)	Repealed	Repealed by the Civil Defense Act.
Contributions to States for civil defense personnel and administrative expenses	50 U.S.C. 2281(f)	Not critical	
Public Welfare and Charities			
Recommendations for improving or correcting conditions concerning disadvantaged people in the United States	PL 99-88, ch. VI (99 Stat. 333)	Not critical	

NOTE: The determination of "Not Critical" has been made for those reports that we believe a statutory requirement is not needed for the Agency to inform Congress about our program activities. The programs would not be significantly impaired if the statutory reporting requirement were eliminated.

National Aeronautics and
Space Administration
Headquarters
Washington, DC 20546-0001

Reply to Attn of: L:PE:leg:L/2000-00326f

MAY 22 2000

The Honorable David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
Committee on Government Reform
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter of April 14, 2000 to Administrator Goldin, signed jointly with Ranking Member Kucinich, requesting recommendations for changes in laws relevant to paperwork issues. At this time we have no recommendations for changes in specific laws. NASA currently has 31 active collections, which are primarily in the area of procurement and program management.

Over the past five years, NASA has made significant strides in reducing the paperwork burden, largely as a result of procurement reform and the availability of the Internet and similar automated technologies to streamline information flows.

Because the majority of NASA's information collection burden relates to program management, the Agency is constantly finding ways to improve the collection process. In response to the Paperwork Elimination Act, many collections are now available electronically, which saves time and resources.

NASA sees paperwork reduction/elimination initiatives as an ongoing activity and will continue to the maximum extent possible to reduce its total paperwork burden.

Thank you for your interest in our paperwork reduction efforts.

Sincerely,

Edward Heffernan
Associate Administrator
for Legislative Affairs

F.M. 5/22/00 —
REC'D 5/26/00

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230

OFFICE OF THE
GENERAL COUNSEL

May 18, 2000

Hon. David M. McIntosh, Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman McIntosh:

The Director of the National Science Foundation, Dr. Rita Colwell, asked me to transmit to you the enclosed agency response to your letter of April 14, 2000. NSF's comments respond to your request for agency recommendations for changes in specific laws that impose unnecessary or overly burdensome paperwork and are good candidates for elimination or reduction.

The Foundation recommends Congress clarify that agencies' peer review panels -- panels that provide expertise and scientific evaluation of research proposals -- should not be covered by the Federal Advisory Committee Act (FACA). The policy underlying the FACA strongly indicates it was never intended to apply to peer review. Doing so creates tremendous paperwork and other burdens on science agencies that extensively use peer review in their support of merit-reviewed science research, while doing virtually nothing to further the Act's purposes.

Should you have questions or like further information on this recommendation, please contact D. Matthew Powell, Assistant General Counsel, at 703/306-1060.

Sincerely,

Lawrence Rudolph

Lawrence Rudolph
General Counsel

Enclosure

cc: Hon. Dennis Kucinich, Ranking Member

Telephone (703) 306-1060 FAX (703) 306-0149

CONGRESS SHOULD ELIMINATE UNNECESSARY PAPERWORK BURDEN BY CLARIFYING THAT PEER REVIEW PANELS ARE NOT COVERED BY THE FEDERAL ADVISORY COMMITTEE ACT

Summary

There has been a historical expectation, consistent with the National Science Foundation Act of 1950, 42 U.S.C. 1861 *et sec.*, that the NSF would draw upon the scientific community in carrying out its mission. Central to that mission is its funding of basic science and engineering research. Peer review of research proposals from the science and engineering community is fundamental to NSF's merit-based grant making, and is carried out using both individual ad hoc reviews and/or panel reviews.

Proposal review panels can be said to meet the literal definition of "advisory committee" in the Federal Advisory Committee Act (FACA). However, we do not believe that the FACA was intended to apply to peer review groups, but to those groups established or utilized to provide agencies advice or recommendations on identified governmental issues or policies.[1]

Of NSF's 61 chartered committees, 46 or 75%, are review panels for research proposals or other award applications. The other 15, or 25%, are "true" advisory committees that provide general advice on agency issues or policy as contemplated by the Congress in adopting the FACA. The 15 advisory committees have 259 members, while the NSF used over 6,500 review panelists last year on its 46 chartered review panels. Use of review panels at NSF has been increasing in response to both internal and external recommendations and pressures, thus exacerbating the problems of applying FACA to review panels.

Applying FACA requirements equally to peer review panels and general advisory committees has always been awkward. FACA is intended to open to public participation and scrutiny the agencies' receipt of policy or program advice from sources outside the federal government and to prevent undue influence on government policymaking.

FACA simply does not fit peer review panels. Panels provide advice from outside persons, but they are narrowly focused on individual research proposals, not policy. Applying FACA to peer review panels creates meaningless and burdensome paperwork, especially for the small number of science agencies that rely so heavily on peer review. It also creates an appearance of excessive numbers of advisory committees, gives OMB, Congress, and the public a distorted picture of the number of true committees, their operations and their cost, and contributes to inappropriate pressures to reduce the number of "committees." Moreover, the openness so crucial to general advisory committees is inappropriate to panel reviews, and thus does nothing to further the policy goals of the FACA.

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[1] See General Services Administration regulations at 41 C.F.R. 101-6.1003; *Grisby Brandford & Co., Inc. v. United States*, 869 F. Supp. 984, 1001 (D.D.C. 1994).

Congress should clarify that the FACA does not apply to committees of experts whose primary function is to provide expertise and evaluation for use by an agency in selecting among applications for grants. This is consistent with the 1995 Report to the Administrative Conference of the United States, "THE FEDERAL ADVISORY COMMITTEE ACT AND GOOD GOVERNMENT," by Steven P. Croly, Professor of Law at the University of Michigan, and William P. Funk. The Report's first recommendation is that: "Peer review committees providing exclusively technical advice or recommendations, such as those convened by the National Institutes of Health and the National Science Foundation, should be understood not to be governed by the Act." In addition, it is consistent with the results of a 1998 GAO Report on FACA in which reporting agencies that used peer review panels almost uniformly supported exempting peer review panels from most or all requirements "because the nature of the panels' work was incompatible with FACA requirements." See page 10. Copies of relevant parts of both reports are attached.

Discussion

NSF's general advice committees are like advisory committees elsewhere -- groups of external experts or representatives who advise NSF on broad program or policy issues, typically including emphases and initiatives in various fields we fund. Such committees fit reasonably comfortably within the scheme of the Federal Advisory Committee Act. But NSF, and other science agencies like NIH, use large numbers of peer review panels that help select among competing proposals for grant funding. In NSF's case, these proposals cover subfields of science, engineering, or science and engineering education.

These peer review panels are like advisory committees in drawing membership from outside the Federal government, but are otherwise quite different. The narrow function they serve in judging among grant proposals is akin to the function technical evaluation panels serve in judging among procurement proposals. Congress did not have review panels in mind when framing the Federal Advisory Committee Act. Neither of the Act's two purposes -- to protect against undue influence by special interest groups over government policy-making, and to allow the public to observe and share in the formulation of government policy and know what influences have affected that policy -- fit peer review. Yet the Act creates major problems for agencies using peer review panels.

Meaningless and Burdensome Paperwork

The large numbers of review panels multiply the cost of complying with the bureaucratic and paperwork requirements of FACA while serving neither of the Act's two major objectives. For example, for agencies like NSF that process many proposals in short time frames,[2] delays involved in the chartering process, or announcing meetings that are properly closed anyway, can become a serious problem when proposals are awaiting review. A technical mistake or unavoidable delay can be pointlessly costly. Such agencies also incur considerable staff time and expense announcing in the Federal Register meetings of review panels that invariably are closed

[2] NSF reviews about 30,000 proposals per year.

to the public under FACA procedures to protect individual privacy and intellectual property rights, and patent rights. Routinely announcing to the public a class of meeting that is properly closed to the public strikes us as pointless and wasteful.[3] More time is spent compiling data and reports after the agency has already reported on the panel's advice and the agency's decisions to the only persons truly interested in them -- the applicants for grant funds.

Desirable requirements on high profile policy-setting commissions apply reasonably well to agency policy advisory committees. With large numbers of review panels, however, the bureaucratic costs and delays associated with FACA compliance for all these separate panels and reviewers get multiplied, often beyond the ability of small agencies to cope. It is especially onerous on a small agency like NSF that must rely heavily on review panels to do its job. This high cost should be weighed against the lack of value added in achieving the FACA's objectives.

Misleading Numbers

Treating these numerous peer review panels as FACA committees gives an appearance of excessive numbers of advisory committees. It skews both NSF and government-wide counts of functioning advisory committees, gives OMB, Congress, and the public a distorted picture, and produces inappropriate pressures to reduce numbers of "committees." Much of the increase in committee numbers in the 1990's came, not from any additional real committees, but from agencies like NSF charting peer review panels that never were intended to be covered by the Act.

The freeze on new committee creation was one manifestation of the schizophrenia agencies endure. On the one hand we're told by the Administration, the GAO, and others to use more peer review panels, and on the other to create no new committees and to cut committee costs. These wholly inconsistent signals breed cynicism and force agencies to ignore either their instructions or the law.

Arbitrarily reducing numbers of peer review panels is no more necessary or wise than arbitrarily reducing numbers of evaluation panels for procurement or personnel recruitment. Moreover, the push to include more and more agency peer review panels under FACA was a contributing factor in the arbitrary freeze on all advisory committees.

Openness, Privacy, and Candor

An additional problem is that, in the case of peer review panels, the broad public participation and access contemplated by the Act both serve much less purpose than in the case of ordinary advisory committees and cause much more difficulty.

With advisory committees generally, public participation and access lets the public observe and share in the formulation of public policy and know what influences have affected it. However,

[3] NSF applicants have ready access to the date a panel will or has considered their proposal, and that information is available to others on request.

peer reviewers serve as experts, not as representatives of interest groups.[4] In addition, peer review panels do not deal with policy issues, but with specific research or other grant proposals. In so doing they take up information and opinion personal to the individual investigator and research ideas for which the investigator and applicant organization deserve protection against the loss of intellectual property and proprietary rights, and the waiver of patent rights. In short, the openness provisions of FACA do not fit peer review.

We do not argue that review panels should be closed to external scrutiny, only that they call for a different kind of openness than policy advisory committees. The process should be open to an investigator whose proposal is being reviewed. Thus, at NSF we automatically send out to the principal investigator a "panel summary" describing the discussion of the proposal at the review panel, plus any other written external reviews of the proposal. We also release to the principal investigator on request any other document in the proposal file. With such an investigator we make only two narrow exceptions to complete openness: we do not release names of reviewers or panelists in connection with their reviews of specific proposals to protect the candor of the review process, and we do not release information on competing proposals.

But being equally open with third parties about evaluations of individual proposals would tend to invade the personal privacy and give away the ideas of investigators. Hence we close panel discussions of individual proposals -- as do other agencies -- and we withhold from third parties in this and other contexts the contents of reviews that contain personal and professional evaluations of individuals and their work. We also withhold proposals that have not (or not yet) resulted in awards. Employment selection panels and search committees, similarly, do not meet in public session, because the matters they discuss are personal to the applicants, most of whom will be rejected. Nor do technical evaluation panels for procurement meet in the open, or publicly release confidential proprietary information, staff recommendations or panel members' judgments.

The values behind these policies are, of course, congruent with those that underlie the Privacy Act and the exemptions under related open-government laws that protect against invasions of personal privacy and release of confidential, proprietary information valuable to the submitter.

Another particular problem that arises in the case of review panels is the need to protect reviewer panelists from lobbying or even harassment by disgruntled, unsuccessful applicants, and thereby preserve the candor of panelists' advice. Most people think highly of themselves, rating themselves and their work among the top ten percent or even the top one percent in their fields. Many are upset or angry when others rate them less highly -- doubly so when, as in proposal review, stakes are high for careers and professional pride.[5]

If those who apply for NSF support could identify which review panelists had said what about their records and capabilities or about their proposals, panelists would find themselves subjected

[4] NSF has a well-developed and longstanding set of conflict of interest rules which it applies to all its peer reviewers, ad hoc mail and panel reviewers alike, whether FACA applies or not.
[5] NSF is able to fund only about 30% of the proposals submitted to it annually.

to "lobbying" pressure, unpleasantness, or even open attack, often unwarranted or at least disproportionate to any offense. To protect themselves, scientists and engineers would either refuse to serve as reviewers or tend to become bland, cautious, and politely diplomatic in their reviews. This would degrade decisions, which are illuminated by direct and bluntly expressed opinions, preferably ones that differ. Thus, we withhold even from investigators the names of reviewers *connected to their review of particular proposals*, though we provide them the full content of reviews or panel summaries.[6]

The openness provisions of the FACA -- its core purpose -- are thus inconsistent with peer review and contrary to the privacy principles of the FOIA and Privacy Act as they apply to peer review.

A Disincentive to Best Peer Review Practice

In addition to skewing numbers, adding to bureaucracy and costs while failing to contribute to the Act's objectives, and threatening privacy and proprietary rights, the application of the FACA to review panels creates a perverse disincentive to use peer review panels. Agencies can solicit individual written reviews by mail without FACA applying.[7] These reviews can provide good input on the technical merit of proposals. They provide less useful input where comparisons of groups of often diverse proposals must be made. Here review panels are often more useful.

Ad hoc, nonconsensus panels from which the agency seeks the advice of individual panelists may avoid FACA[8] and the problems outlined above. Yet an agency gets fuller value from a review panel's discussion and consensus advice. This fuller value comes at a price that discourages use of panels to their fullest extent.

In summary, these problems with application of the Federal Advisory Committee Act to review panels are not new, but are exacerbated by (1) the one-size-fits-all application of rules that fit policy advisory committees well and review panels not at all; (2) the FACA schizophrenia (use more peer review panels and charter everything, but create no new committees and cut advisory committee costs); and (3) by the perverse disincentive to best peer review practice created by the FACA.

These cumulative problems cement our conviction that a statutory remedy should be adopted to make clear -- consistent with the ACUS Report recommendation -- that the FACA does not apply to expert peer review panels. We recommend the following addition to Section 4 of the Act:

> Section 4(c) of the Federal Advisory Committee Act (5 U.S.C. App) is amended by inserting before the period the following: ", or any committee of experts whose primary function is to provide expertise and evaluation for use by an agency in selecting among applications for grants or other assistance awards.

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[6] *See Henke v. United States Dep't of Commerce*, 83 F.3d 1445 (D.C. Cir. 1996).
[7] By definition, the FACA applies to group advice, not advice from single individuals.
[8] See 41 C.F.R. 101-6.1004(i).

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

CHAIRMAN

RCVD 5/18/00

May 17, 2000

The Honorable David M. McIntosh, Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
Committee on Government Reform
United States House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

I am writing in response to your April 14, 2000 request for recommendations for changes to specific laws which appear to impose unnecessary or overly burdensome paperwork requirements and are good candidates for elimination or reduction.

As discussed in the enclosure, the Commission has identified two statutory provisions that we believe could be modified to reduce unnecessary burdens. For each statute, we have given the citation, our proposed change, and the rationale for our proposal. Each of the changes we recommend is aimed either at reducing unnecessary paperwork burdens on individuals, or at minimizing the cost to the agency of maintaining or disseminating information.

Please let me know if you have any questions regarding our recommendations.

Sincerely,

Richard A. Meserve

Enclosure:
Recommendations for statutory changes
to reduce unnecessary paperwork

cc: The Honorable Dan Burton

NRC RECOMMENDATIONS FOR CHANGES IN SPECIFIC LAWS WHICH IMPOSE UNNECESSARY OR OVERLY BURDENSOME PAPERWORK

Ethics in Government Act, 5 U.S.C. App. 4, §102.

The public financial disclosure report (SF 278), which all senior employees must file annually, should be reformed by amending a section of the Ethics in Government Act of 1978 that specifically mandates certain reporting categories (e.g., $1,001 to $15,000, etc.). These categories no longer usefully reflect the financial thresholds requiring recusal from participating in certain Government matters.

For example, the first two categories for the reporting of assets are $1,001-$15,000 and $15,001-$50,000. However, under Office of Government Ethics (OGE) regulations in 5 C.F.R. Part 2640, issued in 1996, an employee can work on a Government matter affecting an entity in which the employee has a financial interest if the value of the interest does not exceed $5,000; and if the Government matter is generic, such as a rulemaking, then the threshold is raised to $25,000. Thus, an ethics counselor cannot determine from the form alone whether someone checking, say, the $1,001-$15,000 category might need to recuse herself from a matter affecting the entity in which she has an investment. Congress wisely gave OGE authority to determine the thresholds requiring recusal because OGE can update those figures more easily than can Congress. However, in 1978 Congress also established numerical reporting categories that, because they reflect then current dollar values, are no longer always useful in making recusal determinations We recommend allowing the Office of Government Ethics to establish numerical reporting categories that match its recusal categories.

The same section of the Ethics in Government Act that establishes numerical reporting categories also requires that employees report any U.S. Government assets they own, such as U.S. saving bonds or Treasury notes. We believe that these assets should not be reported, because they clearly do not present a conflict of interest. Similarly, savings, checking, and money market accounts should not be reported. It should be noted that requirements governing what is reported on the confidential financial disclosure reports specifically exclude reporting these accounts and U.S. Government assets.

Federal Advisory Committee Act, 5 U.S.C. App. 2.

Section 10(b) of the Federal Advisory Committee Act requires that, subject to 5 U.S.C. 552 (FOIA), "the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or agency to which the advisory committee reports until the advisory committee ceases to exist." (After that point, retention and disposition of the committee's records are addressed by other statutes.) Because of the Act's requirements, a statutorily permanent advisory committee, such as the NRC's Advisory Committee on Reactor Safeguards, must retain huge amounts of paper. The following changes in the requirements of section 10(b) would be useful:

> The statute should be amended to eliminate from section 10(b) working papers and drafts prepared by an advisory committee or a subcommittee of an advisory committee,

or committee staff or consultants, except when they reflect the final work product of the committee on a topic or agenda item.

The statute should place a time limit of six years on the required availability of other documents listed in section 10(b), except transcripts and minutes, which would continue to be retained for the life of the committee.

The statute should make clear that availability of listed documents through the Public Document Room (PDR) of the agency to which the advisory committee reports satisfies the requirements of section 10(b), even when the PDR is not the only publicly accessible location in which the committee's documents are maintained. (In order that the public may know which documents were made available to the committee with respect to a meeting agenda item, an appendix to the minutes or transcript of the meeting involving that agenda item could be required to list those documents.)

Conforming changes should also be made to *section 8(b)(2)*, which requires each agency's Advisory Committee Management Officer (required to be designated by the head of each agency that has an advisory committee) to "assemble and maintain the reports, records, and other papers" of any committee during its existence, and (to the extent applicable) to the requirement of *section 10(c)* that the minutes of each advisory committee meeting shall contain "copies of all reports received, issued, or approved by the advisory committee.".

Section 13 of the Act requires the Administrator of General Services to "provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants." The Librarian of Congress must, in turn, "establish a depository for such reports and papers where they shall be available to public inspection and use." This requirement was enacted at a time when Government-wide use of electronic media was not envisioned. It would now seem appropriate to amend this requirement to permit the provision of one copy electronically to the Library of Congress in lieu of filing eight (paper) copies.

Under *section 14(a)* of the Act, unless Congress provides otherwise with respect to an advisory committee, the committee terminates automatically not later than two years after its establishment, unless renewed. Section 14(b)(1) requires that upon the renewal of an advisory committee, the committee "shall file a charter" as provided for a new committee in section 9(c). Except where an item of information required to be included in the original charter has changed significantly, the filing of a brief notice of renewal with those required to receive the charter under section 9 should be sufficient, and would save paper and time of agency staff. While this saving may appear inconsequential when viewed in the context of one small agency, such as the NRC, the saving may be significant when viewed on a Government-wide basis.

Rec'd 5/18/00

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

OFFICE OF THE DIRECTOR

MAY 18 2000

Honorable David M. McIntosh
Chairman, Subcommittee on National
Economic Growth, Natural Resources,
and Regulatory Affairs
U.S. House of Representatives
B-377 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

This is in reply to your letter of April 14, 2000, regarding our recommendations for changes in specific laws that impose unnecessary or overly burdensome paperwork.

The Office of Personnel Management recommends the following:

1) 44 U.S.C. 3506(c)(2)(A)- Change the mandatory 60-Day Federal Register posting to:
   a) required only if a new information collection, or
   b) required if a major revision to a previously cleared information collection.

   Rationale: Information collections that have minor or no changes can be cleared much faster. The opportunity for public comment will still be available during the 30-Day Federal Register notice. Because OPM receives no comments on most of its information collections, the 60-Day Federal Register notice adds time and administrative burden to the process. Limiting the 60-Day Federal Register notice to only new or major revisions to existing information collections will give adequate time for public review and comment before implementation.

2) Add a new subsection for Expedited Processing:
   a) issue one 15-Day Federal Register notice;
   b) OMB will take action within 15 days of the close of the Federal Register notice; and
   c) follow all other processing procedures as specified in 44 U.S.C. 3507(j)(1) and (2).

   Rationale: This new section would return the ability to request expedited processing for those information collections which do not meet the criteria of emergency processing, but warrant faster than normal processing.

Thank you for the opportunity to make recommendations on this process. If you have any questions, please contact Cynthia Brock-Smith, Director, Office of Congressional Relations, 202-606-1300.

Sincerely,

Janice R. Lachance

Janice R. Lachance
Director

cc: The Honorable Dennis J. Kucinich, Ranking Member, Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

MAY 22 2000

The Honorable David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
Committee on Government Reform
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter of April 14, 2000, co-signed by Congressman Kucinich, requesting "recommendations for changes in specific laws which impose unnecessary or overly burdensome paperwork and are good candidates for elimination or reduction." The U.S. Small Business Administration (SBA) has no present recommendations for amending the Small Business Act or the Small Business Investment Act. SBA collects data from the public in the following program areas:

- Capital Access. What SBA collects through participating lenders or, in cases of direct loans, from borrowers is needed to ensure eligibility and the likelihood of repayment. Reducing such requirements could increase possible losses. Even so, SBA strives to keep paperwork burdens at a minimum through its programs such as LowDoc, SBA's one-page application, which facilitates authorizing loan guarantees within 36 hours.

- 8(a) Contracting, HUBZones, and Small & Disadvantaged Businesses (SDB). Each program requires applicants to demonstrate a particular status and establish eligibility. As with SBA loan programs, participation is voluntary.

SBA continues to support the policy of the Paperwork Reduction Act by seeking only enough data to ensure that our programs are efficiently and properly delivered. We hope this responds to your inquiry, and we appreciate the opportunity to comment.

Sincerely,

Aida Alvarez

Aida Alvarez
Administrator

Rec 5/15/00

SOCIAL SECURITY

Office of the Deputy Commissioner

May 12, 2000

The Honorable David M. McIntosh
Chairman, Subcommittee on National
Economic Growth, Natural Resources
and Regulatory Affairs
Committee on Government Reform
House of Representatives
Washington, D.C. 20515

Dear Mr. McIntosh:

This is in response to your letter of April 14 that asked for recommendations for changes in specific laws that impose unnecessary or overly burdensome paperwork.

The Social Security Administration (SSA) has made, and continues to make, a serious commitment to reduce the reporting burden placed on the public. We have traditionally attempted to minimize the information burden imposed on the public, while balancing our mission and eliminating fraud, waste and abuse.

In response to your request, we have reviewed all of SSA's legislatively mandated paperwork requirements that result in paperwork burdens being imposed on the public. We did not identify any that could be modified or eliminated.

An identical letter has been sent to Congressman Kucinich.

Please let me know if I can be of further assistance.

Sincerely,

Judy L. Chesser

Judy L. Chesser
Deputy Commissioner
for Legislation and
Congressional Affairs

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

May 31, 2000

The Honorable David M. McIntosh
Chairman, Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman McIntosh:

This letter is in response to your letter to Chairman Kennard, dated April 14, 2000, in which you requested recommendations for changes in specific laws which impose unnecessary or overly burdensome paperwork and are good candidates for elimination or reduction.

The Federal Communications Commission has completed a Section 257 Trienniel Report to Congress to identify and eliminate market entry barriers for small businesses.

In this report, the agency conducted a thorough review of our strategic plan goals, which included a review of regulatory initiatives to remove impediments in specific services. During this review, we identified legislative initiatives which would reduce unnecessary or overly burdensome requirements that are Congressionally mandated. Enclosed is a copy of the final legislative initiatives.

Thank you for your interest in this matter. If you have any further questions, please contact Judy Boley on (202) 418-0214.

Sincerely,

Andrew S. Fishel
Managing Director

Enclosure

1. **Expedite Processing of Routine Satellite Applications.** This proposal would amend Sections 309(c)(2)(G) and (H), and would add Section 309(c)(2)(I) of the Communications Act. Specifically these changes would authorize the Commission to exempt non-controversial, routine satellite earth station applications from the usual 30-day public notice period. This would, in turn, speed up the processing of routine satellite applications which in 1998 totaled 600, and thus remove a barrier to entry for small businesses that are hampered by the current procedure.

2. **Authorize *Pro Forma* Transfer of Licenses.** An amendment of Section 310 of the Communications Act would authorize the Commission to adopt a notification procedure for *pro forma* assignments and transfers of licenses and construction permits. The amendment would streamline the Commission's administrative processing of assignment and transfer applications, thereby reducing an administrative burden for small businesses.

3. **Streamline Construction Permit Requirements.** By amending Section 310 of the Communications Act, the current two-step construction permit/license process would be replaced with a single-step, license-only process. This measure would benefit small businesses seeking to enter the broadcasting industry, by simplifying the application process and reducing both legal fees and the pre-license waiting period. This result would promote competition.

4. **Remove Entry Barriers for Information Delivery Technologies.** This proposed legislation would add a new Section 716 to the Communications Act and amend Section 207 of the 1996 Act. The changes would remove entry barriers and expand consumer access to competing providers of multichannel video programming and non-video telecommunications and information services. Such services are provided to apartment houses, condominium buildings, and other multiple dwelling units ("MDUs") when a resident requests service from the service provider. The changes would further authorize the Commission to extend protection over broadband transmit/receive antennae, *i.e.*, small antennae used to receive and to transmit broadband signals. Such transmission includes, but is not limited to, two-way information transmission and/or the transmission of information using data, video, audio, or other digital services or formats. These changes would expand consumer access to and choice of competitive video services and eliminate barriers to competition for telecommunications services and technology, especially for the approximately 25 percent of the U.S. population living in MDUs. Any legislative proposal would provide a mechanism to compensate property owners for the use of their property and to reimburse owners for any damage that results from the installation or removal of facilities.

5. **Authorize Broadcaster Lawsuits Against Unlicensed Broadcasters.** This proposal would amend Section 301(a) of the Communications Act and add to it a new Section 301(b). If enacted, it would confer upon licensed broadcasters a private right of action to seek injunctions against "pirate" broadcasters, *i.e.* persons broadcasting without a Commission license, within 100 miles of the licensee's city of license. This would help ensure that the possible introduction of a Low Power FM service would not harm existing broadcasters. The measure would also facilitate enforcement of any eventual Low Power FM rules and regulations.

6. **Increase the Statute of Limitations for Forfeiture Proceedings Against Non-Broadcasters.** An amendment of Section 503(b)(6)(B) of the Communications Act would change the statute of limitations on forfeitures against common carriers and other non-broadcasters from one to three years. This would strengthen the effectiveness of the Commission's enforcement program by increasing the time period within which the Commission may issue a notice of apparent liability for a forfeiture to a telecommunications carrier or other non-broadcast entity. This change would facilitate the ability of market competitors to enforce violations of the Commission's Rules by incumbents.

7. **Reform General Forfeiture Authority.** This proposal would amend Sections 504(a) and (b) of the Communications Act. It would authorize the Commission to prosecute to recover forfeitures in federal district court if the U.S. Attorney General has not initiated such action within six months of written notice of an unpaid forfeiture penalty, or, alternatively, initiate a Commission adjudicatory hearing under Section 503(b). The measure would streamline and increase the effectiveness of the Commission's enforcement program by aiding in the recovery of forfeitures payable to the Treasury of the United States.

8. **Expand General Forbearance Authority.** This proposal would amend Section 10(a) of the Communications Act to expand the Commission's authority to forebear from regulation regarding any and all Commission-regulated services rather than regulation of only telecommunications services. This would benefit small businesses by providing the Commission the needed flexibility to implement deregulatory proposals that reduce or eliminate unnecessary regulation for all its services, not just common carrier services. This would further allow the Commission to apply the same pro-competition, deregulatory benefits from common carrier forbearance to other sectors of the communications market, and would conserve government resources to a greater extent than is permissible today.

9. **Provide International Telecommunications Relay Services.**

This is a proposal to amend Section 225 of the Communications Act. It would require foreign as well as interstate communications providers to provide both interstate and foreign telecommunications relay services ("TRS"). In addition, it would fund interstate and foreign TRS on the basis of revenues derived from interstate and foreign communications. The measure would create a mechanism to handle international TRS and ensure that international calls are treated on the same basis as domestic, interstate calls.

10. **Increase Eligible Carriers to Offer Lifeline Assistance.** This proposal would amend Section 254 of the Communications Act by authorizing carriers other than eligible telecommunications carriers to receive universal service support for serving Lifeline and LinkUp customers. This would bring down a barrier to entry by promoting competition and consumer choice and by helping to ensure access to telecommunications services and technology, especially by indigent citizens.

11. **Exempt Instructional Television Fixed Service Applications from Competitive Bidding.** This proposal adds a new Section 309(j)(2)(D) to the Communications Act. It would exempt applications for licenses or construction permits for Instructional Television Fixed Service ("ITFS") stations from the Commission's competitive bidding authority. This would enhance the ability of educational institutions and governmental entities, especially those with limited funds, to utilize ITFS channels for the benefit of their students and the public. An exemption for such institutions and entities from a requirement to bid at auction for spectrum reserved for instructional use would also further broaden access to important communications services and technology.

12. **Create New Tax Incentive Program.** The measure would benefit small businesses by permitting deferral of taxes on any gain from the sales of telecommunications businesses to small telecommunications firms, including disadvantaged firms and firms owned by minorities or women, as long as that gain is reinvested in one or more qualifying replacement telecommunications businesses. In addition, it would provide a tax credit for sellers who offer financing on sales to small telecommunications firms, thereby facilitating sales of small businesses. It would also include strict limits on the size of eligible purchasing firms, the length of time the firm must hold the business purchased, and the dollar value of eligible transactions. This would encourage diversification of ownership in the telecommunications industry, and provide entry opportunities for small businesses, disadvantaged businesses, and businesses owned by minorities and women.

13. **Clarify the Authority of the Telecommunications Development Fund.** This proposal amends Section 309(j)(8)(C) of the Communications Act. The proposal would authorize any down

payments the Commission may require from initially successful auction bidders to be placed in an insured, interest-bearing account with the interest credited to the Telecommunications Development Fund ("TDF") in the same manner as the up-front deposits made prior to the auction. It clarifies the requirement that the up-front deposits were intended to include the down payments. It further clarifies that the TDF is eligible for consideration as a small business investment company. This would enhance the funding of the TDF, established in the 1996 Act to assist small businesses, at no cost to the U.S. Treasury.

14. **Protect Commission Licenses from Bankruptcy Litigation.** This measure would add a new Section 309(j)(8)(D) to the Communications Act. It would clarify that certain provisions of the Bankruptcy Code are not applicable to any Commission license on which payment is owed. The proposal does not relieve any licensee from payment obligations, and does not affect the Commission's authority to revoke, cancel, transfer or assign such licenses. The measure would benefit small businesses, and their customers, by preventing auctioned Commission licenses from being tied up in bankruptcy court, thus allowing the Commission to redistribute licenses to entities that are better able to deploy the spectrum in a timely manner. This would also strengthen the integrity of the Commission's auction process.

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington DC 20429

DONNA TANOUE
CHAIRMAN

May 11, 2000

Honorable David McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
Committee on Government Reform
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter requesting that the Federal Deposit Insurance Corporation recommend changes to specific laws that impose unnecessary or overly burdensome paperwork and could be eliminated or reduced. I can assure you that the FDIC is committed to reducing regulatory burden for the depository institutions whose deposits it insures and it supervises.

As you are aware, the recently-enacted Gramm-Leach-Bliley Act (GLBA) made necessary but sweeping changes to the fundamental legislative structure governing how financial organizations are regulated and supervised. Many depository institutions or their corporate parents are now filing applications to take advantage of GLBA's changes and entering into affiliations that may change the way they report or the regulator to whom they report. While we are continually looking for ways to reduce burden on depository institutions, I believe the best course is to keep a watchful eye on the effects that GLBA may have on institutions, including possibly increasing paperwork burden.

I want to assure you, however, that the FDIC is firmly committed to reducing regulatory burden, including paperwork, and has a strong track record in these areas. As you may be aware, section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 required the FDIC, in conjunction with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Office of Thrift Supervision, to review all of its regulations and policy statements. The objective of this review included reducing regulatory burden, including paperwork. The review resulted in rescission or revision of a substantial number of the FDIC's regulations and policies including many that imposed paperwork requirements. As the FDIC and the other federal banking agencies reported to Congress, the review resulted in "a genuine reduction in the regulatory burden for financial institutions." (Joint Report: Streamlining of Regulatory Requirements, submitted to Congress Sept. 23, 1996, p. 3.)

As part of this review, the FDIC looked for, and identified, areas where a revision to a regulation or policy would require a legislative change. While several areas were identified, generally the regulatory requirements did not impose paperwork on regulated entities.

In addition to this one-time requirement, pursuant to section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, the FDIC and other banking agencies are required to conduct continuing reviews of the burden imposed by their regulations. The FDIC has established internal procedures for conducting such reviews.

The FDIC takes seriously the need to maintain regulatory burden and paperwork requirements at the minimum level necessary to conduct its functions successfully. This includes determining whether paperwork requirements, if excessive, or unnecessary, are required by statute and not something we can reduce by regulatory action. Keeping this in mind, we have not currently identified any statutes under which we act that impose excessive or unnecessary paperwork requirements.

Thank you again for the opportunity to comment. If we can be of further assistance, please call me at 898-6974 or Alice Goodman, Director of the Office of Legislative Affairs, at 898-8730.

Sincerely,

Donna Tanoue

Donna Tanoue
Chairman

HAND DELIVERED
5/16/00

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Chairman

May 12, 2000

The Honorable David M. McIntosh
Chairman, Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
Committee on Government Reform
United States House of Representatives
Washington, D.C. 20515

The Honorable Dennis Kucinich
Ranking Member, Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
Committee on Government Reform
United States House of Representatives
Washington, D.C. 20515

Dear Chairman McIntosh and Congressman Kucinich:

This letter responds to your letter of April 14, 2000, requesting the Commission's recommendations about statutory provisions that could be amended to eliminate unnecessary or overly burdensome paperwork requirements. The Commission is responding to your request as an official request of a Congressional Subcommittee, *see* 16 C.F.R. § 4.11(b).

The Commission is sensitive to the need to avoid unnecessary burdens on the public, and regularly reviews its rules to ensure that they do not impose avoidable burdens. We appreciate this opportunity to reexamine the paperwork requirements prescribed by the statutes implemented and enforced by the Commission. We have identified the following statutory provisions that could be amended to eliminate unnecessary paperwork requirements. These provisions appear in the Energy Policy and Conservation Act ("EPCA") and the Textile, Wool and Fur Acts.

Energy Policy and Conservation Act, 42 U.S.C. § 6291, et seq.

The Commission believes that three provisions of EPCA impose reporting and disclosure requirements that exceed what is necessary to achieve the statute's purposes.

1. **Requirement that Manufacturers Submit Annual Reports Concerning Lighting and Plumbing Products**

Section 326(b)(4) of EPCA, 42 U.S.C. § 6296(b)(4), requires manufacturers of certain types of home appliances, lighting products, and plumbing products to submit annual reports to the Commission, stating the energy consumption or water use of the product. The statute provides no authority for the Commission to excuse the filing of reports that are not needed for implementation of the statute. The Commission recommends that the statute be amended to exempt certain products from the reporting requirements.

EPCA initially directed the Commission to prescribe rules requiring manufacturers of certain home appliances to label their products with information about energy consumption, and information about the range of energy consumption for comparable products. Pursuant to that directive, the Commission issued the Appliance Labeling Rule (the "Rule"), which requires labels disclosing energy consumption for several categories of home appliances.[1] The Rule requires manufacturers of these products to affix labels showing the energy consumption of the particular model, together with the range of energy consumption of all comparable models. Each manufacturer is responsible for calculating the energy-consumption information for each covered product that it manufactures. The Commission then calculates and publishes the range of comparability for each product category, which manufacturers must include on the labels. The Commission's calculation of these ranges of comparability is based on reports that EPCA requires manufacturers to file.

In 1988 and 1992, Congress amended EPCA to require that the Commission issue rules specifying labeling requirements for certain types of lighting and plumbing products.[2] Unlike home appliances, the required labeling for these products does not include disclosure of ranges of comparability. However, manufacturers are required to file the same annual reports for these products as they are for the appliances initially covered by EPCA. These product reports are of no present use to the Commission, because the Commission does not calculate ranges of comparability for these products or otherwise use the reports to implement EPCA.

The Commission recommends that Congress amend EPCA to dispense with unneeded reporting requirements. The recommended amendment to § 326(b)(4) of EPCA, 42 U.S.C. § 6296(b)(4), appears below, with the suggested new language underlined:

> Each manufacturer of a covered product to which a rule under section 6294 of this title [§ 324 of EPCA] applies (but excluding manufacturers of those products listed in section

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[1] The Appliance Labeling Rule appears at 16 C.F.R. Part 305.

[2] The National Appliance Energy Conservation Amendments of 1988, Pub. L. 100-357, 102 Stat. 671 (1988), amended EPCA to add fluorescent lamp ballasts. The Energy Policy Act of 1992, Pub. L. 102-486, 106 Stat. 2776, 2817-2832 (1992), amended EPCA to add showerheads, faucets, water closets, urinals, general service fluorescent lamps, medium base compact fluorescent lamps, and general service incandescent lamps.

6292(a)(13) - (18) of this title) shall annually, at a time specified by the Commission, supply to the Commission relevant data respecting energy consumption or water use developed in accordance with the test procedures applicable to such product under section 6293 of this title [§ 323 of EPCA].

2. Requirement that Appliance Manufacturers Report Serial Numbers of Appliances

Section 326(b)(1) of EPCA, 42 U.S.C. § 6296(b)(1), requires manufacturers of all products covered by the Rule to notify the Commission or the Secretary of the Department of Energy ("DOE") of the models in current production and the starting serial numbers of those models, and to provide the same information for all subsequently produced new covered models prior to their production. The original purpose of the requirement was to inform the Commission exactly when in a model line products became subject to the Rule, because products manufactured before the effective date (of the Rule or a subsequent amendment) could still be sold without labels after the effective date.

This requirement is now outdated as to product categories currently subject to the law. Any new entrants to the market will have to comply with the Rule upon starting production, and any new models introduced by currently covered manufacturers also will have to be in compliance. The Commission therefore recommends deletion of the statutory requirement for submission of serial numbers. The recommended amendment to § 326(b)(1) of EPCA, 42 U.S.C. § 6296(b)(1), appears below:

Each manufacturer of a covered product to which a rule under section 6294 of this title [§ 324 of EPCA] applies shall notify the Secretary or the Commission--

(A) not later than 60 days after the date such rule takes effect, of the models in current production ~~(and starting serial numbers of those models)~~ to which such rule applies; and

(B) prior to commencement of production, of all models subsequently produced ~~(and starting serial numbers of those models)~~ to which such rule applies.

3. Labeling Requirements for Manufacturers of Lighting Products

The 1988 amendment to EPCA mandated labeling and marking requirements for fluorescent lamp ballasts, and also established energy conservation standards for these products. Ballasts that do not meet these standards may not be sold in the United States. The Commission believes that the labeling and marking mandated for fluorescent lamp ballasts do not add any benefit beyond the required energy conservation standards.

Section 324(a)(2)(B) of EPCA, 42 U.S.C. § 6294(a)(2)(B), directs the Commission to prescribe rules requiring that all fluorescent lamp ballasts complying with the energy

conservation standards, as well as the packaging of such ballasts, be labeled with an encircled "E." The "E" does not provide consumers with any comparative information upon which to base their purchasing decision, because all complying ballasts will bear the mark, and noncomplying ballasts cannot legally be sold domestically.

The Commission recommends, therefore, that Congress amend EPCA so that this directive is deleted from the statute, which would enable the Commission to revise the Rule accordingly. The amendment would consist of deleting § 324(a)(2)(B) in its entirety, and renumbering succeeding sections:

> ~~(B) The Commission shall prescribe labeling rules under this section applicable to the covered product specified in paragraph (13) of section 322(a) and to which standards are applicable under section 325. Such rules shall provide that the labeling of any fluorescent lamp ballast manufactured on or after January 1, 1990, will indicate conspicuously, in a manner prescribed by the Commission under subsection (b) by July 1, 1989, a capital letter "E" printed within a circle on the ballast and on the packaging of the ballast or of the luminaire into which the ballast has been incorporated.~~

Textile, Wool and Fur Acts, 15 U.S.C. § 68, et seq.; 15 U.S.C. § 69, et seq.; 15 U.S.C. § 70, et seq.

These three statutes require that each covered product bear a label showing the product's content, country of origin, and information identifying the manufacturer or other dealer or distributor of the product. 15 U.S.C. §§ 68b(a)(2)(C); 69b(2)(E); 70b(b)(3). Pursuant to rules implementing the statutes, the Commission issues registered numbers (RNs) to qualified applicants residing in the United States who request such a number. These numbers may then be used in lieu of the manufacturer's or other party's name, in order to allow smaller, simpler labels.

Many industry members have advocated a system whereby a single number could be used in all three of the NAFTA countries. Canada has a system of CA numbers, very similar to the RN system. Mexico does not yet have a comparable system, but may develop one in the future. There is also the possibility that the European Union, an industry association, or some other entity would develop an independent system of numbers for international use that is comparable to the Commission's system.

If the Commission were authorized to accept identifying numbers issued in such a system, industry members would be spared the paperwork burdens of submitting multiple applications and placing several identifying numbers on product labels. However, the relevant statutory provisions require that such numbers be both issued and registered by the Commission itself. The Commission could allow use of other systems of identifying numbers if the relevant statutory provisions were amended to read as follows:

> The name, or other identification issued and registered by the Commission, . . . <u>or an identification issued and registered pursuant to an identification system administered by another entity, if the Commission determines that such identification system is</u>

substantially equivalent to the identification system administered by the Commission.[3]

None of the information in this letter is exempt from mandatory public disclosure under the Freedom of Information Act, 5 U.S.C. § 552. Therefore, the Commission does not request the Committee to give confidential treatment to the letter or enclosed material.

By direction of the Commission.

Robert Pitofsky
Chairman

cc: The Honorable Dan Burton
The Honorable Henry A. Waxman

[3] The relevant provision of the Wool Act, 15 U.S.C. § 68b(a)(2)(C), would also require insertion of the phrase "or other identification issued and registered by the Commission."

Rcvd 5/17/00

THE CHAIRMAN

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

May 16, 2000

The Honorable David M. McIntosh
Chairman, Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

The Honorable Dennis J. Kucinich
Ranking Member
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives
1730 Longworth House Office Building
Washington, D.C. 20515-3510

Dear Chairman McIntosh and Congressman Kucinich:

Thank you for your letter of April 14, 2000 regarding unnecessary and burdensome paperwork requirements. One of my priorities as Chairman has been to make securities regulation more efficient and less burdensome, without sacrificing investor protection.

In fact, the SEC has been aggressive in eliminating unnecessary burdens in recent years. For example, in 1995, the SEC created a Task Force on Disclosure Simplification that recommended eliminating 81 rules and 22 forms and modifying dozens of others. The SEC has adopted most of the Task Force's recommendations. Similarly, the SEC streamlined mutual fund disclosure documents by allowing funds to use a short and concise Fund Profile in "plain English" and making funds remove unnecessary or confusing legal and technical terms from the prospectuses provided to investors. The SEC also maintains a website (www.sec.gov) that gives the public electronic access to agency publications (for example, publications that help small businesses learn about special ways to raise capital that require less paperwork) and company filings, and provides an efficient medium to contact the staff about proposed rules, interpretative questions or investment scams. Electronic access to the SEC reduces the public's need to request information in paper and eliminates time delays in waiting for delivery of information. Furthermore, when developing regulatory initiatives, the SEC always considers how to eliminate archaic burdens, promote market efficiency and competition, while remaining faithful to the investor protection mandate of the federal securities laws.

The federal securities regulatory scheme relies on companies disclosing material information on a timely basis as the primary method of informing and protecting investors. This scheme of full and fair disclosure – which Congress enacted in 1933 – has served our nation's investors and securities markets well. For example, we created a centralized electronic repository of company reports (called EDGAR) that both allows investors ready access to this information and can reduce the burden on companies to provide paper copies. The phenomenal growth of the U.S. securities markets reflects investor confidence in this regulatory scheme.

As you may remember, the SEC testified before your Subcommittee on Natural Resources and Regulatory Affairs on March 17, 1998 and discussed how some aspects of the Paperwork Reduction Act (PRA) may impose unnecessary burdens on administrative agencies trying to engage in informed regulation. For example, the PRA imposes burdens on agencies that want to survey their constituencies regarding how their rules are working. Under the PRA, to gather information from more than nine people or firms, OMB approval is required, as is public "notice." The approval process can take an additional 30-60 days. This process is required even if an agency is seeking to make regulations less burdensome or to obtain information regarding the costs and benefits imposed by a proposed rule. Even when members of Congress ask us to study a proposal, we are constrained by the PRA from swiftly collecting information. The SEC staff has worked closely with OMB to comply with the PRA on the paperwork burden imposed by proposed rules, but certain PRA requirements can impede more informed government regulation.

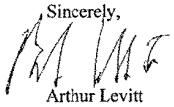
The SEC's testimony suggested two amendments to the PRA to promote more efficient government regulation:

- The PRA should be amended to waive OMB approval of surveys designed to gather information about how rules are working or to collect cost-benefit information in connection with proposed rules; and

- The PRA should be amended to reduce the OMB paperwork preclearance process when agencies are eliminating or streamlining forms or other disclosure requirements.

If you are interested in discussing these suggestions or have any further questions about these matters, please contact Tracey Aronson, the Director of our Office of Congressional and Intergovernmental Affairs, at (202) 942-0010.

Sincerely,



Arthur Levitt

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